

## COPYRIGHT ARBITRATION ROYALTY PANEL

+ + + + +

LIBRARY OF CONGRESS

+ + + + +

HEARING

IN THE MATTER OF:

SATELLITE RATE ADJUSTMENT

DOCKET NO.

96-3 CARP-SRA

Saturday,  
March 22, 1997CARP Hearing Room LM414  
Library of Congress  
101 Independence Ave., S.E.  
Washington, D.C. 20540

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE LEWIS HALL GRIFFITH, Chairperson

THE HONORABLE JOHN W. COOLEY

THE HONORABLE JEFFREY S. GULIN

**NEAL R. GROSS**COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

ORIGINAL

APPEARANCES:On behalf of the Joint Sports Claimants:The Office of the Commissioner of Baseball:

KATHLEEN A. BEHAN, ESQ.  
ROBERT ALAN GARRETT, ESQ.  
GARY GREENSTEIN, ESQ.  
STEVEN MARKS, ESQ.  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1202  
202/942-5444

National Hockey League

PHILIP R. HOCHBERG, ESQ.  
Verner, Lipfert, Bernhard, McPherson & Hand  
901 15th Street, N.W.  
Washington, D.C. 20005-2301  
202/371-6244

On Behalf of Capital Cities/ABC, Inc.; NBC, Inc.; and  
CBS, Inc.:

CHARLES D. OSSOLA, ESQ.  
Lowe, Price, LeBlanc & Becker  
Suite 300  
99 Canal Center Plaza  
Alexandria, Virginia 22314-5503  
703/518-5393

On behalf of Capital Cities/ABC, Inc.:

ROGER GOODSPEED, ESQ.  
ABC, Inc.  
77 West 66th Street  
New York, New York 10023-6298  
212/456-7593

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

APPEARANCES: (CONT.)On behalf of Broadcasters Claimants Group:

JACQUELINE DAVIS, ESQ.  
JESSICA HERRERA, ESQ.  
JOHN STEWART, ESQ.  
Crowell and Moring  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
202/624-2500

On behalf of the Public Television Claimants:

MICHELE J. WOODS, ESQ.  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566  
202/662-5347

On behalf of National Broadcasting Company, Inc.:

DIANE ZIPURSKY, ESQ.  
NBC, Inc.  
1299 Pennsylvania Ave., N.W.  
11th Floor  
Washington, D.C. 20004  
202/637-4535

On behalf of Columbia Broadcasting System, Inc.:

SANFORD I. KRYLE, ESQ.  
CBS, Inc.  
51 West 52nd Street  
New York, New York 10019  
212/975-4601

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

APPEARANCES: (CONT.)On behalf of The Devotional Claimants:

BARRY GOTTFRIED, ESQ.  
Fisher, Wayland, Cooper, Leder & Zaragoza, LLP  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20006-1851  
202/659-3494

and

JOHN H. MIDLEN, JR., ESQ.  
Chartered  
3238 Prospect Street, N.W.  
Washington, D.C. 20007-3214  
Washington, D.C. 20007-3214  
202/333-1500

and

RICHARD M. CAMPANELLI, ESQ.  
Gammon & Grange, P.C.  
Seventh Floor  
8280 Greensboro Drive  
McLean, Virginia  
703/761-5000

On behalf of Program Suppliers:

DENNIS LANE, ESQ.  
JOHN M. COLLINS, ESQ.  
Morrison & Hecker, LLP  
Suite 800  
1150 18th Street, N.W.  
Washington, D.C. 20036-3816  
202/785-9100

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

APPEARANCES: (CONT.)On behalf of American Society of Composers, Authors  
and Publishers (ASCAP):

BEVERLY A. WILLETT, ESQ.  
ANDREW J. SCHAEFFER, ESQ.  
ASCAP  
One Lincoln Plaza  
New York, New York 10023  
212/621-6289  
212/621-6275

On behalf of Broadcast Music, Inc. (BMI):

MICHAEL J. REMINGTON, ESQ.  
GEORGE GALT, ESQ.  
Drinker, Biddle & Reath  
901 15th Street, N.W.  
Suite 900  
Washington, D.C. 20005  
202/842-8800

and

JOSEPH J. DiMONA, ESQ.  
Broadcast Music, Inc.  
320 West 57th Street  
New York, New York 10019  
212/830-2533

On behalf of Satellite Broadcasting & Communications  
Association:

PAUL GLIST, ESQ.  
JOHN D. SEIVER, ESQ.  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
202/659-9750

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

APPEARANCES: (CONT.)On behalf of Prime Time 24:

C. TODD HARDY, ESQ.  
Hardy & Ellison, P.C.  
9306 Old Keene Mill Road  
Suite 100  
Burke, VA 22015

On behalf of American Sky Broadcasting:

CHRIS MEYER, ESQ.  
MIKE KLIPPER, ESQ.  
Meyer & Klipper, PLLC  
Suite 803  
918 16th Street, N.W.  
Washington, D.C. 20006  
202/496-0830

and

CRAIG HOOVER, ESQ.  
JACQUELINE CLEARY, ESQ.  
KRISTIN DONOGHUE, ESQ.  
Hogan & Hartson  
555 13th Street, N.W.  
Washington, D.C. 20004  
202/637-5600

On behalf of National Rural Telecommunications  
Cooperative:

JOAN KEISER, ESQ.  
NRECA  
4301 Wilson Boulevard  
Arlington, VA  
703/907-5817

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

APPEARANCES: (CONT.)On behalf of Library of Congress:

WILLIAM ROBERTS, ESQ.  
Senior Attorney  
Office of General Counsel  
Copyright Office for Compulsory Licenses  
101 Independence Ave., S.E.  
Washington, D.C. 20540  
202/707-8380

ALSO PRESENT:

Tanya Sandros, Administration, CARP  
Vivian Roque-Balboa, Administration, CARP  
Christine Walsh, Paralegal,  
Cole, Raywid & Braverman  
Jerry Parker, Witness  
Edwin S. Desser, Witness  
James Trautman, Witness  
Andy Paul, Senior Vice President, SBCA  
Kyra Fischbeck, Director of Business  
Affairs, Prime Time 24  
David Hummel, Witness  
Marsha Kessler, Witness  
Robert W. Crandall, Witness  
Allen R. Cooper, Witness

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

## C-O-N-T-E-N-T-S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
----------------	---------------	--------------	-----------------	----------------

**Linda McLaughlin**

By Ms. Woods	1606			
By Mr. Glist		1640		
		1790		
By Mr. Garrett		1754		
By Mr. Ossola		1778		
By Mr. Stewart		1787		

## E-X-H-I-B-I-T-S

<u>Exhibit No.</u>	<u>Description</u>	<u>Mark</u>	<u>Recd</u>
--------------------	--------------------	-------------	-------------

SBCA

27-X	Norman Hecht Study	1642	
28-X	Cable TV Prg'g pg 5, 9-30-95	1664	
29-X	Wash Post art, 2-25-97	1741	

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



P-R-O-C-E-E-D-I-N-G-S

(9:00 a.m.)

CHAIRMAN GRIFFITH: Good morning. Before we begin, Ms. Woods, let me simply state, last Thursday, the motion of ASkyB to strike the testimony of Mr. Sternfeld, beginning on page 1562, line 12, and concluding on 1567, line 15, is denied. However, we assure counsel that the arbitrators will give what weight, if any, we deem appropriate to the response he made to that question. Thank you.

Whereupon,

LINDA McLAUGHLIN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WOODS:

Q Ms. McLaughlin, could you please state your name for the record, and spell your last name?

A Linda McLaughlin, M-c-L-a-u-g-h-l-i-n.

Q And, Ms. McLaughlin, what is your current position?

A I'm an economist and a Vice President at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 National Economic Research Associates, known by its  
2 acronym, NERA.

3 Q And what are your responsibilities at  
4 NERA?

5 A I do research on various industry  
6 projects, including in the television industry and  
7 other media.

8 Q And what is your educational background?

9 A I have a B.S. from Arquette University,  
10 majoring in mathematics, and I have an economics  
11 degree and a Master's Degree from the University of  
12 Pennsylvania.

13 Q What is your experience in conducting  
14 research in the field of Satellite television?

15 A I've done several research projects in  
16 Satellite television. One looked at a start-up  
17 Satellite Pay-Per-View operation, another looked at  
18 the scrambling of the signals to the Home Satellite  
19 dishes, and a third looked at a merger of Satellite  
20 companies, but one of the issues there was what is on  
21 transponders and how programming gets delivered.

22 Q And what is your experience in conducting

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 research in the area of Cable television?

2 A In Cable, I've done projects involving  
3 Cable operators like Cable rate regulation, those  
4 involving Cable programmers like a merger of two Cable  
5 programmers, and also looked at start-up Cable  
6 programmers.

7 Q And is a more complete statement of your  
8 qualifications included in your testimony at  
9 Attachment A?

10 A Yes.

11 Q Ms. McLaughlin, what were you asked to do  
12 for this proceeding?

13 A I was asked to look at the current  
14 Compulsory rates for retransmitting Satellite  
15 stations, with particular attention to the Network and  
16 PBS stations in the White areas, to see whether they  
17 were reasonable and to estimate a minimum rate for the  
18 future, according to the statutory criteria.

19 Q And did you do that?

20 A Yes.

21 Q Okay. Before we go into those results,  
22 I'd like to see if there are any questions concerning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 your background information.

2 Your Honor, at this point, I would make  
3 the witness available for voir dire.

4 CHAIRMAN GRIFFITH: Any questions?

5 MR. GLIST: No questions.

6 CHAIRMAN GRIFFITH: All right. Thank you.

7 BY MS. WOODS:

8 Q Ms. McLaughlin, you said that you were  
9 asked to assess the current Satellite Compulsory  
10 License fees and determine a minimum Compulsory fee  
11 for 1997 to 1999. How did you go about doing that?

12 A Well, first, I looked at the economics of  
13 the industry -- we're talking about secondary  
14 retransmission. Then I looked at the competitive  
15 situation and, again, with particular focus in the  
16 White area. Because of that, I determined that the  
17 best benchmark for secondary retransmission was the  
18 price that Satellite distributors paid for Cable  
19 Network, and I used that as my benchmark.

20 Q Did you also take into account other  
21 statutory criteria?

22 A Yes. In addition, I did consider whether

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 there were other factors that had to be taken into  
2 account and, also, in particular, what the impact  
3 would be on the Satellite carriers and on the  
4 copyright owners and the public.

5 Q What were your overall conclusions?

6 A I concluded that the current rate, or set  
7 of rates, is too low, and that it should be raised in  
8 the future to the rate that's the average of the  
9 popular Network, which would be an average of 27 cents  
10 for 1997 to '99, and that's a minimum given the  
11 approach that I took. In other words, just to  
12 estimate, at least it should be that much.

13 Q And why do you characterize your result as  
14 a minimum value for the Compulsory fee?

15 A Because in choosing the benchmark, I  
16 picked a group of Cable Networks that were -- compared  
17 to which the retransmitted stations were at least as  
18 valuable and, therefore, they should pay at least as  
19 much for them.

20 Q And it would be possible the retransmitted  
21 stations could be more valuable?

22 A Oh, yes. In fact, the data that I looked

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 at suggested that, in general, they are more valuable.

2 Q Ms. McLaughlin, I'd like to turn to a more  
3 detailed examination of how you arrived at your Basic  
4 Cable Network benchmark.

5 What information did you use to compile  
6 your minimum benchmark for the Compulsory fee?

7 A You mean how exactly did I get to the 27-  
8 cent figure?

9 Q Sure.

10 A I looked at the average price of the 12  
11 popular Cable Networks, and I looked at it in terms of  
12 the price that the Satellite distributors would pay  
13 for the programming alone. In other words, they would  
14 pay that, and then they would pay more than that for  
15 any extra cost of delivering it to the Satellite home.

16 Q And did you use the average price of those  
17 popular Basic Cable Networks?

18 A Yes.

19 Q Why did you choose to do that?

20 A Well, if you look at the size of the  
21 Satellite carriers, they are about 500,000 to 2  
22 million or so in terms of their subscribers. That

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 would place them someplace in the middle of Cable  
2 operators, so that if you -- and other buyers of Cable  
3 Network programming.

4 So if you're talking about volume  
5 discounts and so forth, while they're not as large as  
6 the very largest buyers of Cable Network programming,  
7 they would pay someplace like the average price,  
8 perhaps just above the average price, on volume  
9 considerations alone.

10 Q How did your approach take the fair market  
11 value of Broadcast stations that are retransmitted  
12 into account?

13 A Well, what I tried to do is look at the --  
14 to try to figure out what the value would be of the  
15 station in comparison to what its -- what an  
16 appropriate benchmark would be. And in coming up with  
17 a benchmark, I tried to look at the competitive  
18 alternative available to the Satellite home and, in  
19 most cases, the Satellite home -- focusing now  
20 specifically in the White area -- don't really have a  
21 lot of other alternatives for television.

22 They have video stores. They would be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1     able to perhaps receive non-Network stations to a  
2     small extent, but the closest alternative to receiving  
3     the retransmitted stations via Satellite, is receiving  
4     the Cable Networks via Satellite.

5             So, in making this comparison, I first  
6     picked something that was a competitive alternative,  
7     and then I wanted to see did they value the Broadcast  
8     stations more highly, the same, or less highly. And  
9     so I turned to a survey of consumer value for stations  
10    and Cable Network, and then I also looked at ratings.

11            Q     Just to back up for a moment, on page 2 of  
12    your testimony, you state that Satellite  
13    retransmission is a secondary market for the affected  
14    Broadcast station.

15            A     Right.

16            Q     Could you explain what you mean by that  
17    statement?

18            A     Well, the Broadcast stations are  
19    transmitting primarily in their local market, and  
20    that's the first market for them. If they are then  
21    retransmitted -- picked up and brought elsewhere, that  
22    is a secondary market, in the same way that movies are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 made for theatrical showing, but then they are also  
2 shown in home video and on television and in foreign  
3 countries. These other markets are secondary markets.

4 Q Now, I think you already described to us  
5 how Basic Cable Networks compete with Broadcast  
6 Networks retransmitted to Satellite homes at the  
7 consumer level.

8 A Right.

9 Q How do Cable Networks compete with  
10 Broadcast stations at the distributor level, the  
11 Satellite distributor level?

12 A The demand that Satellite distributors  
13 have for programming is entirely derived from the  
14 demand that their consumers have for the programming.  
15 So, if the consumers are considering choosing  
16 Broadcast stations or Cable Networks, or some mix of  
17 each, then the Satellite distributors are doing the  
18 same.

19 Q And how do Satellite homes typically go  
20 about choosing among Basic Cable Networks and  
21 retransmitted stations?

22 A Well, if they are a C-band home with a big

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 dish, they have a choice of many different packages  
2 and make their own packages, and they can choose which  
3 programs they want to have included in that package.  
4 If they are a DBS home, then they can choose from  
5 different levels of programming offered by the  
6 different DBS operators.

7 Q You mentioned before that you had looked  
8 at the relative values of retransmitted Broadcast  
9 stations and popular Basic Cable Networks. What is  
10 your conclusion with regard to the relative value of  
11 these two different types of signals?

12 A The stations versus the Cable Networks.

13 Q Correct.

14 A The stations are at least as valuable as  
15 the Cable Networks, based on the values that consumers  
16 gave to them in a particular survey that I cite in my  
17 testimony, and also based on ratings.

18 Q Could you briefly describe the survey you  
19 relied on to us?

20 A Yes. This was a survey that was  
21 undertaken in 1993, among Cable subscribers in two  
22 areas. They were Top 10 markets, the Cable systems

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 had a fairly large number of channels. And the  
2 consumers were asked to take the total fee that they  
3 paid for Cable and to break it down into how much for  
4 a particular signal.

5 Now, I'm not talking about coming up with  
6 the exact value here, I'm just talking about relative  
7 value, so that they said how much should you pay for  
8 this ABC station, for this NBC station, for this CBS  
9 station, for CNN, for ESPN, for WTBS the Superstation.

10 Q And how did the results of that survey  
11 support your conclusion?

12 A On average, the value of the ABC, NBC,  
13 CBS, PBS, and WTBS, on that survey was \$2.04 and, on  
14 average, the value for the five popular Basic Networks  
15 that were specifically mentioned in the survey was  
16 \$1.69, and that's CNN, ESPN, USA, Family, and  
17 Lifetime. And that's shown on Table 1 in my report.  
18 There's a graph showing that different signals had  
19 different values, and it varied from one to another  
20 but, in general, the Broadcast stations were at least  
21 as valuable as the Basic Cable Networks.

22 Q On page 4 of your testimony, you also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 mentioned ratings. How did ratings support your  
2 analysis?

3 A Well, if you look at the ratings -- and  
4 this is the next table, Table 2 -- it shows that in  
5 Cable homes where consumers have a choice of watching  
6 both Broadcast stations and popular Cable Networks,  
7 the ratings for the Broadcast stations are at least as  
8 high and, in many cases, higher than the popular Cable  
9 Networks, something like, on average, the total day  
10 24-hour rating of 2.8 for the Broadcast stations and  
11 .7 for the Cable Networks.

12 Q Now, do ratings necessarily equate with  
13 consumer valuation of programming?

14 A No. If you compare the values that the  
15 consumers said in the first table with the ratings  
16 here, the ones with the highest ratings don't  
17 necessarily have the highest value. People don't  
18 necessarily want to watch the programming all the  
19 time, they might like some programming very much.

20 Q And so what is your overall conclusion  
21 wiht regard to the value Satellite homes would place  
22 on retransmitted Broadcast stations in comparison with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 popular Basic Cable Networks?

2 A That they would value them at least as  
3 much.

4 Q And what is your conclusion about how much  
5 Satellite distributors would be willing to pay for  
6 Broadcast stations in comparison to what they pay for  
7 popular Basic Cable Networks?

8 A Again, that they would value them at least  
9 as much.

10 Q Did you also look at the difference in the  
11 current rates between PBS and Network stations on the  
12 one hand, and Superstations on the other hand?

13 A Yes.

14 Q And what was your conclusion wiht regard  
15 to the validity of that distinction?

16 A Well, based on the fair market value  
17 standard which, again, would be based on the demand  
18 for the programming, there's no reason to see why  
19 Network and PBS stations would be valued lower than  
20 the Superstations. If you look at the values the  
21 consumers give them, or at the ratings, they are not  
22 less.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q And you just mentioned that what you would  
2 look at is demand. Why is that?

3 A Because in a secondary market, what  
4 determines the market value is the demand. It's  
5 compared to a primary market where supply and demand  
6 factors are both important.

7 Q Now I'd like to just look at the  
8 information you took into account in determining the  
9 appropriate price to use as a benchmark. What  
10 adjustments did you make or take into account in  
11 arriving at a benchmark Cable Network price for  
12 purposes of your analysis?

13 A Once I came up with the average price for  
14 these Basic Cable Networks, it wasn't necessary to  
15 make any adjustments in order to come up with a  
16 minimum that would be paid for the broadcast rights to  
17 retransmit the retransmitted station. And that is  
18 because when a Satellite distributor receives a Cable  
19 Network, it doesn't typically pay the same price that  
20 the average Cable operator would pay.

21 There are extra costs in many cases of  
22 getting the programming to the Satellite distributor

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 and, as a result, these extra costs for the Cable  
2 Network are passed on by the Cable Network in the  
3 price to the Satellite distributor. And, in fact,  
4 there's a whole lot of FCC rules about this in terms  
5 of can you charge more to Satellite distributors than  
6 Cable operators, and there are particular rules about  
7 it that affect the Satellite Broadcast carriers as  
8 well as vertically integrated Cable Networks.

9 They allow the Network to charge a higher  
10 price to the Satellite distributor, as long as it's  
11 based on the extra cost of getting the programming out  
12 there.

13 Q And so did your analysis take into account  
14 the cost of distributing the Basic Cable Network to  
15 the Satellite homes?

16 A Well, on the Broadcast station side, when  
17 they are retransmitted, there is a copyright fee that  
18 people would pay, which I'm saying should be the 27  
19 cents, and then on top of that the carriers have the  
20 cost of actually getting the signal to the home. In  
21 the context of the Cable Networks, the Cable Networks  
22 do the getting the signal to the home, but they charge

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 extra for it when you're talking about Satellite  
2 distributors, because of the extra cost of dealing  
3 with the Satellite distributor.

4 Q So, in effect, those costs would balance  
5 out?

6 A That's right. That's right. If you look  
7 at it as what the Satellite distributor is buying, on  
8 the one hand he's paying what I'm calling in the  
9 future will be 27 cents, but he's not just paying  
10 that. He's paying that 27 cents for the Cable  
11 Network, plus an extra cost for getting it to the  
12 Satellite distributor.

13 And on the other hand, for the Broadcast  
14 stations, I'm saying they should also be paying the  
15 same 27 cents, and then on top of that there would be  
16 the extra cost for actually getting the station to the  
17 home. And those two costs are very similar.

18 Q And both of those are borne by the  
19 Satellite carrier?

20 A The Satellite distributor, yes.

21 Q In one instance, by paying more for the  
22 Network, and then the other by actually paying --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           A       Undertaking the cost themselves, that's  
2       right.

3           Q       Now, did you also consider whether there  
4       was a need to account for advertising inserted by  
5       either a Basic Cable Network or by a distributor?

6           A       Well, on the advertising that is in the  
7       Network programming. Whether it's a Cable Network  
8       program or whether it's a PBS or a major Network  
9       program or in a Superstation, that advertising is the  
10      same in both cases -- that is, there is advertising  
11      inserted by the person who has the signal, and that  
12      advertising goes out to the Satellite home, whether  
13      it's on a Cable Network, the advertising ESPN puts in  
14      its program, or on ABC, the advertising that ABC has  
15      in its program.

16                 Now, another level of advertising -- and  
17      maybe that's what you were asking me about -- the  
18      advertising at the local level?

19           Q       Right.

20           A       The Satellite distributors don't insert  
21      advertising. C-band distributors can't insert  
22      advertising in Cable Networks. Physically, they don't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 touch it. And DBS distributors are just beginning to  
2 insert advertising, to work out contracts but, for the  
3 most part, are not inserting advertising in Cable  
4 Network programming.

5 So, since Satellite distributors are not  
6 inserting advertising in the Cable Network, that's  
7 equivalent to their not inserting advertising in the  
8 retransmitted station, although, again, to some  
9 extent, there is a little insertion on the  
10 retransmitted stations. I understand two of the  
11 Network affiliates have special advertising inserted  
12 for Satellite on Prime Time 24.

13 Q Does it appear that Satellite distributors  
14 pay lower prices as a result of not having, in  
15 general, the ability to insert advertising on Cable  
16 Networks?

17 A No. And there's no -- first, there's no  
18 requirement in the FCC rules that you give a break to  
19 people who don't get to insert advertising and,  
20 second, there's no break given. Same with Cable  
21 operators. Cable operators who don't insert  
22 advertising don't pay any less for the programming

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 either.

2 Q Now, I just wanted to clear up -- I think  
3 you mentioned a moment ago, PBS among the programs  
4 with advertising and, of course, PBS is noncommercial,  
5 correct?

6 A Oh, right. Right.

7 Q Could you just summarize for us --

8 A Excuse me. There are also noncommercial  
9 Cable Networks that don't have advertising in it as  
10 well, and --

11 Q So, basically, the signal stays the same  
12 when a Satellite carrier redistributes it?

13 A That's right.

14 Q And why do you state that Cable operators,  
15 on balance, likely have a higher net cost of  
16 distributing Basic Cable Networks to consumers?

17 A Well, if you consider all of the costs  
18 that Cable operators have in getting Cable Networks  
19 out -- you know, the wires, and the boxes, and turning  
20 on the homes -- compared to a Home Satellite dish  
21 distributor who makes phone calls to the consumer,  
22 goes in, and the distributor calls the Cable Network,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 they don't have all those wires.

2 Now, DBS distributors obviously have the  
3 big Satellite up there and that has a certain cost,  
4 but it doesn't have the same kind of incremental cost  
5 to incremental consumers or of adding incremental  
6 Networks.

7 Q So, overall, what is your conclusion on  
8 how the Panel should consider advertising availability  
9 when looking at secondary retransmission of Broadcast  
10 signals?

11 A There's no need to adjust for it. When  
12 you are looking at the price that Cable Networks are  
13 charging to the Satellite distributors versus the  
14 price that they would pay for retransmitted Broadcast  
15 stations.

16 Q Turning to your Basic Cable Network price,  
17 the benchmark you created -- I believe you discuss  
18 this on page 7 -- how did you select the Basic Cable  
19 Networks you used in your analysis?

20 A I picked popular Basic Cable Networks for  
21 two reasons. One, in the survey they looked at  
22 popular Networks, but I didn't limit myself to just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 those five, since the other Networks also would be a  
2 substitute from the point of view of the consumer.  
3 But I didn't go beyond the popular Networks -- and  
4 when I say popular, I mean the ones that are  
5 distributing about 90 percent of all of the homes. I  
6 didn't go beyond that because for Networks that are  
7 trying to get more distribution, they often give some  
8 kind of a promotional price in order to get that  
9 distribution, at least at first, and then after they  
10 become popular, the promotional price goes away.

11 Q And are those 12 Networks that you  
12 utilized listed in Table 3 of your testimony?

13 A Yes.

14 Q Could you describe for us how you  
15 calculated your Basic Cable Network benchmark price?

16 A Yes. I took the total license fees  
17 received by these Networks as reported in the most up-  
18 to-date Kagan, and then I again took the subscribers,  
19 the average subscribers during the year, again  
20 reported in the most up-to-date Kagan, and I took off  
21 a factor for illegal subscribers -- that is,  
22 subscribers that are not being paid for, since the way

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the subscriber numbers come is basically from looking  
2 at who gets the Network, not who pays for it, and  
3 there's some people who get Cable without paying for  
4 Cable, and the same thing with Satellite. So, I took  
5 off an 8 percent factor that was also mentioned in  
6 Kagan, once again, the industry source, to account for  
7 these illegals.

8 And then I looked at the prices and, after  
9 doing that, they seemed to me, you know, based on  
10 other factors that I have seen, and other analyses,  
11 generally, look to be correct after doing this.

12 Q And looking at Table 3, could you describe  
13 for us the increase in the benchmark price, starting  
14 with 1992?

15 A Right. The benchmark in 1992 was an  
16 average of 18 cents, and that increased at a rate of  
17 approximately 10 percent a year, up to the 24 cents in  
18 1995. And it's been forecast to increase at a rate of  
19 about 5 percent a year after that, through 1999.

20 Q And the 18 cent benchmark for 1992, how  
21 close is that to the Compulsory rates that are  
22 currently paid?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Well, the top rate is 17.5 cents, so I  
2 think that's sort of another way of looking at it.  
3 You can look at the absolute amount, or you could say,  
4 well, this benchmark is similar to the 17.5 cent rate  
5 and it has increased at 10 percent a year beyond that.

6           Q       And what does your Basic Cable Network  
7 benchmark price tell us about the Compulsory rate for  
8 Satellite retransmitted Broadcast signals?

9           A       I think it should be at least as large.

10          Q       Now, you also considered the impact of  
11 potentially higher fees on Satellite carriers and  
12 consumers, didn't you?

13          A       Yes.

14          Q       Turning to page 8 of your testimony, you  
15 discussed that impact. What is your overall  
16 conclusion with regard to the economic impact on  
17 Satellite carriers of the increase in the Compulsory  
18 fee?

19          A       If the Compulsory fee increased to 27  
20 cents or so, I don't think there would be a  
21 significant adverse impact on the Satellite carriers.

22          Q       And what do you conclude with regard to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the impact of an increase in the fee on the  
2 availability of secondary transmissions to consumers?

3 A Well, since there wouldn't be an impact on  
4 carriers, also -- even in current prices -- there  
5 wouldn't be an impact on the consumer.

6 Q On page 8 of your testimony, you mention  
7 the rapid growth in the Satellite industry. What has  
8 been the pattern of that growth?

9 A Starting in 1989, there were about 600,000  
10 subscribers through C-band dishes. There were more  
11 dishes, but not everybody subscribed. C-band  
12 subscriptions are now up over 2 million.

13 DBS was virtually unknown at that time,  
14 and it is now up over 4 million.

15 Q And what is your expectation of the future  
16 of those in the Satellite industry?

17 A Future growth is not expected for C-band,  
18 that's expected to kind of trickle down as C-band  
19 people convert into DBS. But, overall, DBS is  
20 expected to grow a lot and, overall, the whole Home  
21 Satellite industry is expected to grow.

22 There are -- I have a table that estimates

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 that there will be about 12 million in 1999. I think  
2 ASkyB gave projections of in five years from now,  
3 which I guess is 2002, 20 million on the DBS side.

4 Q And did you look at the impact of the May  
5 1992 increase in the Compulsory license fee on  
6 Satellite carriers and the availability of secondary  
7 transmissions?

8 A Yes. The way that I determined that there  
9 wasn't going to be a significant impact was to look at  
10 past price increases both on the retransmitted  
11 stations and on Cable Network.

12 In May '92, there was an increase of the  
13 rate from 3 and 6 cents up to 6, 14, and 17.5 cents.  
14 And when you look at the number of stations  
15 retransmitted and the amount of subscriptions to the  
16 retransmitted stations, you don't see any jump, you  
17 don't see any going down due to the increase in price.

18 Q You mentioned on page 9 of your testimony,  
19 that the number of subscribers to retransmitted  
20 stations increased commensurately with Satellite homes  
21 in '92 and '93. Could you explain what you meant by  
22 that statement?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Right. That's what I said about the no  
2       decline. Satellite homes, of course, were growing.  
3       You would expect, other things equal, that the  
4       retransmitted stations would also be growing if there  
5       wasn't any impact of this price increase and, in fact,  
6       about the same percent of Satellite homes subscribed  
7       to retransmitted stations before the price increase as  
8       after. And I think I show that on Table 6.

9                   In '91, the numbers are slightly lower  
10       than they are in '92 and '93 because of the percent of  
11       homes receiving the particular retransmitted signals.

12           Q       Now, what do the financial results of  
13       United Video and Superstar suggest about the financial  
14       impact of fees on Satellite carriers?

15           A       I looked at both the -- United Video is a  
16       company that has both carrier and a distributor to  
17       Satellite homes, that distributes not only the  
18       stations but the Cable Networks as well. And I looked  
19       at the revenues and profits for United Video and  
20       Superstar, the distributor to the Satellite home, and  
21       saw that during this time period when the price of the  
22       retransmitted signals were going up, and also the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 price of Cable Networks were going up, their revenues  
2 increased. And although they said programming costs  
3 had gone up and so forth, their profits also  
4 increased.

5 Q Why didn't you look at financial  
6 information for other Satellite carriers?

7 A Those were the only ones that I had  
8 available. They were publicly available.

9 Q What impact have forecasts of future  
10 increases in Basic Cable Network prices had on  
11 forecasts of future growth in Satellite homes and  
12 Basic Cable Network subscribers among those Satellite  
13 homes?

14 A Well, I mentioned before that the forecast  
15 is for 5 percent future increases in Cable Network.  
16 DBS is expected to continue to grow, not to be  
17 affected by the price increase. It's expected that as  
18 they get more subscribers, that they will continue to  
19 grow and, of course, go from their current situation  
20 on the DirecTV side and so forth, of just start-up,  
21 not yet profitable, to profitable.

22 Q And how would you expect the number of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Basic Cable Network subscribers in subscribing homes  
2 to be affected by the price increases?

3 A Well, the same thing, they are also  
4 expected to increase. And while the price to the  
5 consumer may go up, remember, there is inflation as  
6 well, and so that in real terms prices are not  
7 expected to go up all that much.

8 Q Now, what is your conclusion about the  
9 impact of an increase in the rate for retransmitted  
10 PBS and Network stations to the level of the  
11 Superstation rate as adjusted for the recent increase  
12 in Cable Network prices?

13 A If the PBS and Network stations increase  
14 up to the same level as Superstations and up to the 27  
15 cents that I'm suggesting as a minimum, there wouldn't  
16 be any significant adverse impact in the Satellite  
17 carriers or the consumers in getting them. And I did  
18 that by looking at the price that's charged for the  
19 programming by the Satellite distributors, and also at  
20 the margin that they get on other things.

21 Q Could you just describe a little more what  
22 you looked at?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       I have a table that looks at a particular  
2 package of programming. It's somewhat difficult to  
3 compare prices in this industry because everything is  
4 all packaged up. So, I tried to find things where you  
5 could say you get this whole package that's got both  
6 Network stations and Superstations and Cable Networks  
7 all in one package because then how could you figure  
8 out what price to charge for each one, but it's  
9 something that sold them separately.

10               So, this one programmer, NPS, has a  
11 "create your own" package that you could pick.  
12 Whatever you want, they have separate prices. You pay  
13 a different price if you buy it monthly, or annually,  
14 or three months, and so forth, and as long as you buy  
15 five all together, they give you this rate.

16               And so I looked at what prices they were  
17 charging. For the 12 Basic Networks that I included  
18 in my benchmark, they were charging an average of 98  
19 cents. There's a table that shows this, I think it's  
20 the last one, Table 8. Some they are charging more,  
21 and some they are charging less, and they are also  
22 sometimes throwing in other Networks with it. So,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 with A&E, you get History, and so forth. But let's  
2 say this is what you want to buy, these 12 Networks,  
3 how much do you have to pay -- \$11.75 -- so, 98 cents  
4 each.

5 And then I looked to see how much they are  
6 charging for retransmitted Network and PBS stations,  
7 and they are charging, depending on whether you buy  
8 the Denver ones or the Prime Time East, 86 to 90  
9 cents. And so it seemed to me that while they are  
10 paying 6 cents for these Network and PBS stations  
11 versus 24 cents for the popular Cable Networks on an  
12 equivalent basis, they are charging similar prices and  
13 prices that are closer than the difference in the  
14 costs.

15 Q And what proportion of current retail  
16 prices roughly would be affected by your minimum  
17 benchmark price?

18 A Well, compared to the prices in terms of  
19 buying them separately, it would be about 30 percent  
20 of the price, the 27 cents, and something in the high  
21 20s to 30 percent. And that, as a percentage of  
22 revenues for other narrowly targeted products like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Premium, or the Golf Channel sometimes sold  
2 separately, or some foreign language program sold  
3 separately, 50 to 60 percent of revenues paid out in  
4 programming costs is often expected.

5 Q You mentioned the Premium Cable Network  
6 and Pay-Per-View services, what are the fees charged  
7 for those to consumers indicate with regard to the  
8 capability of the Satellite carriers to offer program  
9 to White area subscribers?

10 A Well, while the Basic Cable Network and  
11 the Superstations are offered to a wide area, the  
12 Network and PBS stations can only be offered in the  
13 White area that is a smaller portion of the country.  
14 But there is other programming that is also offered  
15 only to some subscribers, not so much by part of the  
16 country but by the taste of the subscriber. And that  
17 programming typically has margins of something like 50  
18 percent -- that is, the program cost is about 50  
19 percent of the price that is charged to the consumer.

20 Q What is your conclusion wiht regard to  
21 whether it's appropriate to discount the Compulsory to  
22 take account of White area limitations?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Well, this is really part of the  
2 explanation. I don't think you need to discount it  
3 when you see both that there's other that the  
4 Satellite distributors offer that is only offered to  
5 smaller groups of people, and even some Superstations,  
6 WSBK, only has somewhat over a million viewers, I  
7 believe, so that not all Superstations are as  
8 widespread as, say, TBS. And when I say a million, I  
9 mean Cable and Satellite, together.

10           Q       And what is your testimony with regard to  
11 the likely increase in White area subscribers?

12           A       I think the White area subscribers are  
13 going to increase as DBS penetrates more deeply into  
14 the White areas -- that is, there are people who don't  
15 have -- who live in a White area and don't already  
16 have a C-band dish, and don't already have DirecTV or  
17 Prime Star or one of the other DBS operators. And as  
18 that penetrates more deeply, I think there will be  
19 more subscribers, and I've seen forecasts of that from  
20 some of the financial analysts, Morgan Stanley in  
21 particular.

22           Q       What is your overall opinion with regard

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 to what you were asked to look at for this proceeding?

2 A I think the current set of rates is below  
3 fair market value. I think that Basic Cable Networks  
4 as received by Satellite homes is a good benchmark,  
5 and that that would indicate that for the future the  
6 rate should go up to an average of 27 cents for '97 to  
7 '99, and I don't think that that will have an adverse  
8 impact on the Satellite carriers or the public.

9 MS. WOODS: Thank you very much. That's  
10 all I have. Does the Panel have questions of Ms.  
11 McLaughlin?

12 CHAIRMAN GRIFFITH: I have one question.  
13 Ms. McLaughlin, you say if the increase were to an  
14 average of 27 cents, there would be no significant  
15 impact either on the carriers or on the consumers.

16 Were you able to tell anywhere, or should  
17 we be concerned, whether or not the carriers, for  
18 instance, in 1992, following the increase, pass that  
19 increase directly on to the consumer, or do you  
20 determine that there's no significant impact because  
21 the number of carriers has increased and the number of  
22 consumers has increased substantially?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 THE WITNESS: I did not have prices of how  
2 the packages were offered back in '91, for everything.  
3 But as far as I could tell from looking at some other  
4 packages that were offered, the prices did not really  
5 -- to Satellite homes -- did not really increase when  
6 the other prices increased. What they tended to do  
7 was package things up a little bit more, give you more  
8 Networks for a lower price per Network.

9 Now, if you wanted to buy exactly the same  
10 thing as before, I wasn't able to make that  
11 comparison. But I haven't seen -- you know, I  
12 couldn't say definitely that it was not passed on or  
13 passed on, but if we're talking about somebody who is  
14 charging a range now -- the figures I saw were 70  
15 cents to \$1.10 for the Network and PBS stations, each.  
16 The difference between, you know, what, 3 cents and 6  
17 cents, you would hardly notice it in that range of the  
18 prices that were offered.

19 CHAIRMAN GRIFFITH: So, it really doesn't  
20 even make a difference whether it was passed on or  
21 not, considering the market value?

22 THE WITNESS: Well, it could make a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 difference, but it wasn't -- I wasn't able to do it  
2 specifically, and I didn't see that it would have had  
3 an effect.

4 CHAIRMAN GRIFFITH: Okay. Thank you.

5 Do you have any questions?

6 JUDGE GULIN: No.

7 JUDGE COOLEY: No.

8 CHAIRMAN GRIFFITH: All right. Cross-  
9 examine?

10 MR. GLIST: Ms. McLaughlin, I'm Paul  
11 Glist. I represent the Satellite Carriers.

12 CROSS-EXAMINATION

13 BY MR. GLIST:

14 Q You've done a good deal of work for the  
15 Cable television industry, I understand.

16 A I have done work in the Cable television  
17 industry, yes.

18 Q So you're familiar with how that industry  
19 is organized?

20 A Generally.

21 Q And are you familiar wiht the Cable  
22 Compulsory license?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       You're talking about now for Cable  
2 operators retransmitting distant stations and local  
3 stations?

4           Q       That's correct.

5           A       Somewhat.

6           Q       And you're familiar with the Satellite  
7 Compulsory license that's at issue in this proceeding?

8           A       Yes, again, somewhat.

9           Q       And do you have an understanding of how  
10 Cable operators negotiate with Cable Networks?

11          A       I have an understanding that certain  
12 operators negotiate rates, and others pay ratecards.

13          Q       And are you familiar with the terms of  
14 those negotiated relations between Cable Networks and  
15 Cable systems?

16          A       No.

17          Q       Do you know the regulatory history of  
18 Cable television?

19          A       Well, not to give a speech on right now,  
20 but it's something that I am generally familiar with.

21          Q       And how about the regulatory history of  
22 the Satellite business?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Again, just general familiarity.

2 Q I'd like to start wiht the Norman Hecht  
3 Study, which comes up early in your testimony.

4 A Okay.

5 Q And I think it may help us if we go  
6 through the study itself.

7 A Okay.

8 Q Ms. McLaughlin, the Norman Hecht Study is  
9 the study which forms the basis of your Table 1, is  
10 that correct?

11 A That's right.

12 CHAIRMAN GRIFFITH: Mr. Glist, is this an  
13 exhibit that should be marked?

14 MR. GLIST: It should be marked SBCA 27-X,  
15 I believe.

16 CHAIRMAN GRIFFITH: All right, SBCA 27-X.

17 (Whereupon, the document was  
18 marked for identification as  
19 Exhibit No. SBCA 27-X)

20 BY MR. GLIST:

21 Q Now, do I understand that the Norman Hecht  
22 Study surveyed only two Cable systems?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A That's right.

2 Q And is it correct that according to the  
3 Hecht Study, consumers also expressed a willingness to  
4 pay \$2.82 for Cable News Network?

5 A The value for Cable News Network, I think,  
6 was the highest of all the values, yes.

7 Q Was the number that I just mentioned  
8 correct?

9 A Yes, \$2.82, right.

10 Q But that is not the license fee that Cable  
11 systems pay for CNN, is it?

12 A No.

13 Q Did consumers also express a willingness  
14 to pay \$1.28 for the Family Channel?

15 A Yes.

16 Q And that is not the license fee that is  
17 paid by Cable systems for the Family Channel, is it?

18 A No. Now, you say willingness to pay. I  
19 want to make clear that this wasn't -- they weren't  
20 asked their willingness to pay, they were asked to  
21 take a figure and split it up, all right? And all I'm  
22 using it for is the relative values that they are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 given, not the absolute value.

2 Q So the consumers were not really asked to  
3 indicate how much they would be willing to pay for  
4 particular service?

5 A Not in this survey.

6 Q They were just asked to take a fixed-  
7 dollar sum and divide it up.

8 A That's right.

9 Q Doesn't the Norman Hecht Study itself say  
10 that there's no reason to expect that this data will  
11 directly set the value of a signal to a Cable  
12 operator?

13 A It may.

14 Q Could you look at the page marked PBS  
15 0004, second paragraph from the bottom.

16 A (Complying.) Right, to determine the  
17 weight Cable subscribers value it, there's no reason  
18 that this will directly set the value to the Cable  
19 operator. Right.

20 Q So, when one takes a figure like \$2.04  
21 from the Norman Hecht Study, that would be subject to  
22 the same qualifier, wouldn't it?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       That's right, it would not directly set  
2       the value. Well, subject to the same qualifier, but  
3       not quite the same qualifier -- that is, the Cable  
4       operator is the primary market for the Cable Network,  
5       and so -- and, in this case, for the retransmission  
6       consent negotiations that we're talking about.

7           Q       Okay, let's talk about that.

8           A       Could I finish my answer?

9           Q       Oh, I'm sorry.

10          A       Whereas the Satellite operator is the  
11       secondary market and, in the secondary market, he said  
12       what was most important was the demand. And so the  
13       demand in this case is that the Satellite operator is  
14       not equal to the demand the consumers have, but  
15       derived from the demand the consumers have for the  
16       signals.

17          Q       Are you saying that the Broadcast stations  
18       in the Norman Hecht Study were being programmed to  
19       satisfy Cable television system operators?

20          A       Oh, I see what -- no, but these were  
21       people who were in the local area.

22          Q       Those --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           A       That's exactly right. The primary you  
2 would say is over-the-air, but you have to consider  
3 that for an over-the-air television station if, in its  
4 local area, 60 percent of the consumers are receiving  
5 that station through their Cable system, then  
6 obviously the Broadcast station takes into account  
7 Cable and over-the-air viewers together, they don't  
8 just program for the over-the-air viewers.

9           Q       The Cable operator in a local market which  
10 picks up a Broadcast signal and retransmits it is  
11 engaged in secondary retransmission, is it not?

12          A       Yes.

13          Q       Let's talk about retransmission consent  
14 for just a moment. Do I understand correctly that the  
15 Hecht Study was performed on behalf of the National  
16 Association of Broadcasters in advance of the 1993  
17 retransmission consent negotiations?

18          A       I'm not sure if it was exactly in advance,  
19 but it was related to it, yes.

20          Q       If you look at page 4, the very first  
21 sentence, wouldn't that give you some help on the  
22 answer?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Right.

2 Q And what does that suggest to you?

3 A That by June '93, the stations have to  
4 make a decision, and this was done in April '93, so,  
5 yes, it was in advance.

6 Q And retransmission consent was a right  
7 given by Congress to both local and distant  
8 Broadcasters, wasn't it?

9 A I've heard it was to local.

10 Q So your understanding is that it was just  
11 to local and not to distant?

12 A That's my understanding, but I'm sure it's  
13 a legal question. I'm not a lawyer.

14 Q Well, let's deal within the scope of your  
15 understanding then. Retransmission consent was a  
16 right under which, say, a Broadcasting Network could  
17 tell Cable systems whether or not they could carry the  
18 signal of that Broadcast Network, is that right?

19 A Only if they own the stations. It was the  
20 right of stations to say that if you want to  
21 retransmit my station, you have to pay me a certain  
22 amount of money, or you have to do something else for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 me, or we have to enter into a corporate venture, or  
2 whatever.

3 Q Each station was given the right to grant  
4 or deny retransmission consent?

5 A Right, and at the same time they were also  
6 given the right to opt instead for must-carry status.

7 Q The local stations were given that right?

8 A Yes, the same as they were given the  
9 retransmission consent right.

10 Q An ABC owned-and-operated station could,  
11 of course, exercise that retransmission consent either  
12 on its or own or through the Network owner, is that  
13 correct?

14 A Well, I think you're asking me a corporate  
15 law question or something -- that is, who is deciding  
16 this, is it now Disney, or is it ABC Network, or is it  
17 the particular WABC-TV.

18 Q No, I wasn't asking you that. You offered  
19 the distinction between an owned-and-operated station  
20 and a station that might be affiliated with a Network,  
21 and I just wanted to make clear that we were talking  
22 about this on the same wavelength.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   So, let's just take an owned-and-operated  
2 station first. With respect to an owned-and-operated  
3 station, that station or its owner could exercise this  
4 right of retransmission consent?

5                   A       Right.

6                   Q       Do you know with respect to a Network  
7 affiliate, whether the FTC gave that affiliate the  
8 right to give retransmission consent power to a single  
9 party like the Network itself?

10                  A       I don't know whether the FTC gave it the  
11 right, but I understand that in some cases that  
12 happened, I think, with Fox.

13                  Q       Do you know whether it happened with other  
14 Networks?

15                  A       I didn't think it did happen with other  
16 Networks, but I'm not sure.

17                  Q       The Hecht Study was an effort to create an  
18 empirical basis for Broadcasters to bargain with Cable  
19 system operators, wasn't it?

20                  A       I wouldn't put it that way.

21                  Q       How would you put it?

22                  A       It was intended to give the Broadcasters

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 something that they could say, look, we all know that  
2 Broadcast stations are valuable, and we want something  
3 for it. I think maybe this was intended for the press  
4 rather than for the actual negotiations.

5 Q Are you familiar with what took place  
6 during the 1993 Retransmission Consent "Wars", as they  
7 are sometimes called?

8 A Generally.

9 Q When the Networks entered 1993, wasn't  
10 their initial position that they wanted cash for  
11 retransmission consent?

12 A Yes.

13 Q Do you know whether they obtained cash, in  
14 the end?

15 A Some stations obtained cash.

16 Q How about ABC Television Network stations?

17 A ABC O&Os, it's my understanding, they  
18 obtained carriage of ESPN2.

19 Q That was the consideration offered?

20 A Right.

21 Q And so Cable systems, by carrying ESPN2  
22 and paying license fees for ESPN2, obtained consent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 from ABC to carry an ABC station, is that --

2 A Right.

3 Q And how about NBC, do you know how that  
4 worked out?

5 A The NBC O&Os did the same thing with  
6 America's Talking.

7 Q And did America's Talking evolve into  
8 CNBC?

9 A No, it evolved into MSNBC.

10 Q MSNBC. And how about CBS, how did CBS  
11 fair in 1993?

12 A CBS did not get a carriage for  
13 retransmission consent, and I believe they simply  
14 allowed carriage of the CBS O&O stations at that time,  
15 and so they, for a short -- you know, for that period.  
16 I think their consent is now up, and up for  
17 renegotiation again.

18 Q The CBS Network held out for a longer time  
19 for payment rather than for a quid pro quo with a  
20 Cable Network?

21 A I don't recall.

22 Q Do you know whether the Satellite carriers

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 are carrying ESPN2 and MSNBC?

2 A The -- when you say the Satellite  
3 carriers, as Satellite distributors, ESPN2 and --  
4 ESPN2, yes. MSNBC, yes, as to Home Satellite dishes,  
5 but I don't think -- I don't know on DBS.

6 Q You don't know KU side?

7 A Right. I think maybe yes to some, no to  
8 others.

9 Q So --

10 A Yes to DirecTV for MSNBC, but I think no  
11 to the others.

12 Q DirecTV is the largest KU distributor in  
13 the country today?

14 A Yes.

15 Q Retransmission consent works on a three-  
16 year cycle, doesn't it?

17 A Or six. Three or six, I believe.

18 Q Are you familiar with what took place on  
19 retransmission consent in 1996?

20 A I think that -- somehow, I thought that it  
21 was actually happening in 1997, so I'm not sure --  
22 that is, I thought right now -- for example, I thought

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 there was some question about whether CBS was going to  
2 use Eye on People as a retransmission consent Network.

3 Q Do you have an understanding at all that  
4 there is a three-year cycle of election in  
5 retransmission consent?

6 A No. As I say, I thought that somehow it  
7 was six, or maybe people would give a double cycle or  
8 something, I'm not sure. I'm not sure.

9 Q But do you know whether, let's say, ABC  
10 has obtained cash for retransmission consent since  
11 December 31, 1996?

12 A I don't know that they have. As I say, I  
13 thought that they obtained six years' worth of  
14 carriage for ESPN2, for six years of retransmission  
15 consent, but I could be wrong. If you are saying that  
16 it's a three-year cycle, then I would think they would  
17 have used ESPN News, and I didn't think that they were  
18 able to do that. I thought that they had already sold  
19 the right.

20 Q I'd like to turn now to the pricing of  
21 Cable Networks which are sold to Cable Television  
22 systems, if I may. I believe that your testimony is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 intended to turn our attention to the average license  
2 fee paid by Cable for the receipt of Cable Networks,  
3 is that correct?

4 A No, it's the average -- to the license fee  
5 paid by Satellite distributors for the receipt of  
6 Cable Networks, but I used the same average that is  
7 for all buyers, Satellite and Cable together.

8 Q I see, because you did not have access to  
9 information discrete to the Satellite carriage  
10 business?

11 A That's right. The Satellite carriers did  
12 not give that, but I do have access to information  
13 from which you could infer that Satellite distributors  
14 pay something like the average price based on their  
15 volume, plus an additional charge for the extra cost  
16 of dealing with the Satellite carriers.

17 Q We'll come to that, but I want to deal  
18 with the advertising issue first, if I may. You are  
19 obviously familiar, from your direct testimony, with  
20 the arrangements that Cable Television systems make  
21 for the sale of spots within a Cable Network, is that  
22 correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. WOODS: Objection, Your Honor, that  
2 was not covered in the direct testimony.

3 CHAIRMAN GRIFFITH: Payable spots, is that  
4 your question?

5 MR. GLIST: I may be mistaken, but I  
6 recall from her oral direct that she testified first  
7 to insertion of advertising by Cable Networks, and to  
8 sale of them by Cable systems. If I misunderstood,  
9 then I apologize and I stand corrected.

10 CHAIRMAN GRIFFITH: Well, why don't we  
11 make it simple. Why don't you simply ask her if she's  
12 familiar with the industry practice.

13 BY MR. GLIST:

14 Q Are you familiar wiht the manner in which  
15 Cable Television systems sell advertising in Cable  
16 Networks?

17 A Yes.

18 Q Are you familiar with organizations called  
19 "advertising interconnects"?

20 A Yes.

21 Q Can you describe what an advertising  
22 interconnect is?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       It's an either soft -- that is, just a  
2 group of people -- or actually hard-wired, all  
3 connected together, a group of Cable systems in the  
4 same general local area that agree to form a venture  
5 in order to sell some advertising time on some  
6 Networks, to all of them at once, so you don't have --  
7 if someone wanted to buy advertising time on the  
8 systems in a particular area -- say, the Greater  
9 Washington Area -- they wouldn't have to go to each  
10 Cable system -- there are several of them in the area  
11 -- to buy, if they could buy it through the  
12 interconnect.

13           Q       And with respect to the sale of  
14 advertising time on a national basis by the Cable  
15 Networks, you are familiar with that process?

16           A       I know that Cable Networks sell national  
17 advertising, yes.

18           Q       And the general arrangement there is if a  
19 Basic Cable Network has a national footprint, they are  
20 going to sell advertising in the national marketplace?

21           A       The regionals sell regionally, and the  
22 nationals sell nationally, right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Q       So, would a DTH carrier with a sufficient  
2 footprint, have the opportunity to sell spots on a  
3 national basis within insertable minutes in a Basic  
4 Cable Network?

5           A       No.

6           Q       Why is that?

7           A       Well, there's two reasons. One is, if you  
8 are talking about a C-band distributor, the C-band  
9 distributor doesn't touch the signal. The Cable  
10 Network actually is the one who turns on, so to speak,  
11 the home by telling GI, the unscrambling center, to  
12 turn them on.

13                   Second, if you're talking about a DirectTV,  
14 a DBS carrier, who does have the signal, they beam it  
15 down themselves to people who are focusing up on their  
16 dish. That, as I understand it, is a specific right  
17 that would have to be negotiated between the DBS  
18 operator and the Cable Network. And the reason for  
19 that is because when Cable systems sell advertising,  
20 they are selling advertising in a local area, like the  
21 Washington area, whereas the Cable Network is selling  
22 national advertising. But if you have the DBS

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 operator selling advertising, they would be selling it  
2 nationally, which might be in competition to a greater  
3 extent with the Cable Network, who is also selling it  
4 nationally. So, I think that's why those arrangements  
5 have to be worked out by contract.

6 Q Okay. Well, let's deal with the C-band  
7 side. The C-band side is the part of the business  
8 that you testified should expect erosion of subscriber  
9 base, is that right?

10 A Gradual, yes.

11 Q Gradually. That's the one that you pegged  
12 at about 2 million?

13 A It's about 2 million now, 2.4 million,  
14 something like that.

15 Q Have you looked at that population to-  
16 date, or are those 1996 figures?

17 A You mean have I looked at them in March  
18 '97?

19 Q Yes.

20 A Yes.

21 Q And what is the C-band population in March  
22 '97?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Well, an estimate that I saw was down  
2 about 100,000 from the year before, 2.3, something  
3 like that.

4           Q       So it's declining?

5           A       Right, gradually -- small.

6           Q       On the KU side, you said that a KU  
7 carrier's right to insert advertising in a Basic Cable  
8 Network would have to be the subject of a specific  
9 contract negotiation, is that correct?

10          A       That's my understanding. I saw a report  
11 of it in a Kagan Newsletter in '95, that said that  
12 they were just starting to do that negotiation.

13          Q       Do you know the terms of KU carriage  
14 agreements today?

15          A       No.

16          Q       So you don't really know whether or not KU  
17 carriers have the right to insert advertising?

18          A       I don't know, but I know that they haven't  
19 been doing it.

20          Q       When Cable Television operators were  
21 beginning to assemble audiences, let's say, ten years'  
22 ago, was the volume of advertising sales lower than it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 is today?

2 A Sure.

3 Q And it's grown substantially?

4 A Yes.

5 Q Would you expect the potential for  
6 advertising sales to grow commensurately in the  
7 Satellite business, as Satellite homes come on-line?

8 A You know, I don't know whether that will  
9 happen or not, as I say, due to the divergence of  
10 interest between the Cable Networks and the Satellite  
11 operators. But I have noticed that when you look at  
12 analyst plans, like Morgan Stanley and Merrill Lynch  
13 and so forth, I haven't seen any projections when  
14 they're trying to say when will they break even and  
15 all. I've seen revenue projections for various kinds  
16 of revenue, but I haven't seen any projections of ad  
17 revenue. So, as far as I know -- and they haven't  
18 been talking to the analyst community about ad  
19 revenue, saying they are going to make money on ad  
20 revenue. So, it doesn't seem to be figuring in the  
21 plans.

22 Q Is the Morgan Stanley report that you're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 talking about, the 1995 report?

2 A Yes.

3 Q Was that the report that was issued prior  
4 to the loss of the advanced sale for TCI?

5 A Yes.

6 Q And didn't Morgan Stanley specifically  
7 predicate their predictions on an assumption that  
8 advanced would close with TCI?

9 A Well, their predictions about Prime Star,  
10 but not their predictions about DirecTV, for example.

11 Q Didn't they also have to hypothesize  
12 certain numbers in order to make their projections?

13 A Anyone has to hypothesize in order to make  
14 projections.

15 Q They hypothesized capital structure, for  
16 example?

17 A Yes.

18 Q Did they have access to all of the income  
19 and expense accounts for the carriers?

20 A They only have access to publicly reported  
21 and, you know, sometimes they have these analyst phone  
22 calls where they disclose a little bit more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 information to the analyst, which then becomes  
2 publicly available, but it's not in the 10-K,  
3 necessarily.

4 Q You mentioned a potential divergence of  
5 interest because Satellite carriers would be looking  
6 at a national market for advertising, as would Basic  
7 Cable Networks.

8 Aren't many of the Basic Cable Networks  
9 owned by Cable Television multiple system operators?

10 A Yes.

11 Q Aren't many of these Satellite carriers  
12 owned by those same multiple system operators?

13 A Yes.

14 Q So, do you think there is a potential for  
15 such parties to reach an accommodation in this matter  
16 of negotiation?

17 A Well, it depends on whether it's the same  
18 party in the same case. In other words, if you are  
19 saying here is somebody who has 100 percent interest  
20 in this channel, in this system, and in this DirecTV-  
21 type programming, yes, but I don't think that that's  
22 actually the case. In other words, you're talking

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 about is the industry, generally, have some vertical  
2 integration? Yes. But are you saying that here's a  
3 company that owns 100 percent of this Network and also  
4 owns 100 percent of this CBS operator. I don't think  
5 that -- so far, that that's the case with many  
6 Networks. You know, maybe ASkyB and FX could work it  
7 out, they're both owned by Fox. But even there, isn't  
8 ASkyB a partnership with Echostar? You know, it's not  
9 a 100 percent ownership.

10 Q You haven't really made the effort to  
11 project how these relationships might evolve in your  
12 forecasts, have you?

13 A Well, my forecasts are really for a  
14 relatively near-term. We're already in 1997, and  
15 we're only going out to 1999. So, I don't think that  
16 there's going to be that much evolving during that  
17 time period.

18 Q If one were trying to measure the price  
19 paid by a Cable system for a Basic Cable Network, one  
20 would have to account for advertising avails in that  
21 calculation, wouldn't you?

22 A Not necessarily. That is, the price is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the price.

2 Q The price is the price.

3 A In other words, if -- you said if you were  
4 trying to determine the price that they paid, why  
5 would you have to take into account anything? I don't  
6 necessarily see the connection.

7 Q Well, let me show you a document which I  
8 believe you produced. I'm distributing a document  
9 which has previously been marked as SBCA 7-X.

10 CHAIRMAN GRIFFITH: Do you want to remark  
11 this?

12 MR. GLIST: If we could remark this as 28-  
13 X.

14 CHAIRMAN GRIFFITH: Exhibit 28-X.

15 (Whereupon, the document was  
16 marked for identification as  
17 Exhibit No. SBCA 28-X)

18 BY MR. GLIST:

19 Q Ms. McLaughlin, is this part of a Kagan  
20 Cable TV Programming Newsletter which was produced on  
21 your behalf in this proceeding?

22 A Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q Is this a document to which you made  
2 reference in the preparation of your testimony?

3 A Yes.

4 Q I would just like to focus on one  
5 particular service which is shown in the box, CNN-Plus  
6 Headline News?

7 A Right.

8 Q This particular box is labeled "Real Cost  
9 of Basic Networks to Cable Affiliates", and then it  
10 performs a calculation. Would you describe what the  
11 calculation is that it performs?

12 A The calculation shows the average  
13 Affiliate fee, where the average is computed in the  
14 same way that I did -- that is, taking out the  
15 illegals. And that's the reason I cited it.

16 It then takes out the local ad revenue,  
17 net of commissions but not other costs, assuming that  
18 the affiliate sells local ad time on the Net, on the  
19 Cable Network, and subtracts the two to get the quote  
20 "Net cost".

21 Q In this particular example, you're using  
22 1995 numbers, it shows affiliate fees at 33.1 cents

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 net ad revenue, at least net of commissions, at 43.8  
2 cents, with a net profit to the Cable system of 10.7  
3 cents?

4 A That's right. If you were just focusing  
5 on that to say, as a result of looking at the channels  
6 that you devote to CNN and Headline News, let's just  
7 look at the amount you paid for the programming on the  
8 channels and the net ad revenue you get for  
9 programming on those channels, but it doesn't really  
10 go beyond that calculation in terms of figuring out  
11 what the real cost would be.

12 Q But at least for purposes of this box,  
13 there is a presentation that if one wanted to  
14 determine the real cost of a Basic Network to a Cable  
15 system, one would account for local advertising  
16 revenue?

17 A Well, you have to understand what this is  
18 in the context of, and it's the plans to translate  
19 WTBS from a Superstation into a paying Superstation,  
20 or whatever they plan to call it -- in other words, a  
21 regular Cable Network. And in doing the sales job on  
22 that to the industry, TBS, we're saying, well, now

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 you'll be able to insert advertising, and you should  
2 be willing to pay us more money for this as a result.  
3 It won't really cost you that much different than you  
4 are paying to get it with Compulsory licenses.

5 Q TBS.

6 A TBS, right. We're saying that. And so  
7 Kagan kind of picked up on that and said, well, if you  
8 look at that for all of these Networks, see, this is  
9 what would be the cost, and so forth. But this isn't  
10 the way you would actually figure out either in the  
11 case of TBS or in the case of these other Networks,  
12 how much the value is for a particular Network  
13 because, first of all, there's other costs in selling  
14 ad time -- cash flow is about half of the net  
15 advertising because you've got to have a sales force,  
16 you've got to have insertion equipment, and so forth.

17 And, second, you have to only be able to  
18 sell the advertising because of the Network, for it  
19 really to be a cost related to that Network.

20 So, suppose CNN said, well, look how much  
21 money you make on my Network. You should pay me more.  
22 The Cable operator could say, well, you know, I could

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 run those ads on Discovery instead. I don't have to  
2 put them on CNN. And so it's not CNN that is  
3 necessarily giving them that revenue, it's because  
4 they have CNN, they get this audience they can then  
5 sell to advertisers.

6 Cable systems are at a lot more basic  
7 level of selling than trying to sell audiences and  
8 particular programs, for the most part. They are  
9 often just saying -- they don't know how many people  
10 are watching in Washington, CNN. And, particularly,  
11 they don't know how many are watching in Bethesda,  
12 Maryland, on CNN. Nobody is measuring that. So, they  
13 just say, well, we have a system with 20,000 people,  
14 and we have these Networks, and your car dealership is  
15 near these places, and so we can put the ad on CNN or  
16 we could put it on some other Network.

17 So, it would only be the incremental ad  
18 revenue that a particular Network brought to the Cable  
19 system that would be taken into account on the Cable  
20 system's part, in deciding the value of the Network to  
21 him.

22 Q I would like to explore this answer with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 you. You characterized Cable system sales of  
2 advertising as rather basic. Do you have a sense of  
3 the dollar volume of sales by Cable systems in the  
4 local market?

5 A Yes.

6 Q What is that?

7 A It's something over -- it's about 5  
8 percent of the Cable system revenue, and I think that  
9 would be putting it something over \$1 billion.

10 Q Over a billion. And is that projected to  
11 increase?

12 A Yes.

13 Q In fact, this Kagan Newsletter projects it  
14 to increase to more than \$3 by the year 2000, doesn't  
15 it?

16 A You're talking in terms of dollars per  
17 sub, but, yes.

18 Q Yes.

19 A I was talking in billions.

20 Q I understand. You also said that a Cable  
21 operator could say to CNN, well, I don't value it that  
22 much, I could put it over in Discovery. Doesn't CNN

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 and Discovery deliver different demographics?

2 A Actually, they are very close in  
3 demographics, very close.

4 Q So, a Cable operator would look at the  
5 demographics of the particular channels?

6 A Well, I picked that example because they  
7 are very close, however, the sales of -- Cable sales  
8 are at a lot more rudimentary level than that. They  
9 don't usually look at demographics and, see, they only  
10 have national demographics. They don't know what the  
11 people in Washington -- who is watching presumably in  
12 Washington. You'd think you could reach the Senators  
13 if you chose the advertising on CNN, but you don't see  
14 that in the national data.

15 So, it would be more atmosphere that sold,  
16 rather than actual numbers. There are no hard numbers  
17 in local Cable sales.

18 Q But there are hard numbers in national --

19 A There are numbers nationally. I wouldn't  
20 say hard. They are all in points of a rating point,  
21 like .05.

22 Q I'm not talking about relative ratings,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I'm talking about the availability of data.

2 A Well, I meant available data but, when  
3 you're that small, they are not as hard as when they  
4 are bigger.

5 Q There is data available for the sale of  
6 national advertising in Basic Cable Nets?

7 A Yes.

8 Q Do you know how many minutes of  
9 availability CNN offers?

10 A Not offhand.

11 Q Does three minutes an hour sound within  
12 the range?

13 A Some offer two and some offer three.

14 Q But you haven't looked at the particular  
15 services?

16 A I have looked at the particular services,  
17 but not so that I have it memorized.

18 Q WTBS, as a retransmitted Broadcast signal,  
19 can't offer advertising avails to local Cable  
20 operators, is that correct?

21 A That's my understanding.

22 Q But if they were a Cable Network, they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 could do so?

2 A Right, and that was going to be the  
3 selling feature to the Cable operators.

4 Q You also mentioned that there are sales  
5 costs in selling advertising.

6 A Yes.

7 Q And this number nets out commissions, but  
8 doesn't deal with those sales costs?

9 A Right.

10 Q If one is selling in the national  
11 marketplace, one would not have to recreate sales  
12 forces in 11,000 Cable systems, right?

13 A Oh, that's exactly it. They do need it.  
14 There's a local sales force in each place. That is,  
15 how do you know that the commercial actually gets on  
16 the local station?

17 Do you mean if the Cable Network is  
18 selling it?

19 Q If the Cable Network is selling it.

20 A If the Cable Network is selling it, they  
21 have their own sales force.

22 Q They have their own sales force. That

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 sales force operates on a national scale, is that  
2 correct?

3 A Right.

4 Q They don't go to an auto dealership in  
5 Peoria and try to sell that dealer?

6 A That's right. No, they go to the  
7 headquarters of the auto company.

8 Q Right. So that if you are dealing wiht  
9 the national advertising marketplace and the insertion  
10 of national spots, there are certain economies of  
11 sales force?

12 A Yes. Yes, it's certainly more costly to  
13 sell local locally, than it is to sell nationally, and  
14 that's why it costs more.

15 Q I'd like to ask you to turn to page 5 of  
16 your testimony.

17 A (Complying.)

18 Q My apologies, I meant to say page 6. Now,  
19 page 6, I believe, is where you offer a comparison  
20 between the costs that Cable systems incur and the  
21 costs that Satellite distributors incur, is that  
22 correct, at the bottom of the page?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       About what Cable operators can do versus  
2       Satellite distributors, yes.

3           Q       You say Cable operators likely have a  
4       higher net cost of distributing Basic Cable to  
5       consumers than Satellite distributors do, right?

6           A       Yes.

7           Q       Now, a Satellite carrier -- let's take  
8       this transaction apart, if we can.

9                   In the KU-band, does a Satellite carrier  
10       collect Cable Networks and retransmitted rebroadcast  
11       signals at an uplink facility? Is that the first  
12       step?

13          A       Now, when you say KU, you're talking about  
14       DirecTV and Primestar and Echostar and Alphastar. I  
15       mean, there are some Home Satellite dishes people with  
16       KU-band dishes, that's not what you're talking about.  
17       You're talking about somebody with a Satellite that  
18       you're pointing your dish at one Satellite --

19          Q       High power, medium power, Primestar,  
20       DirecTV.

21          A       I was calling that DBS.

22          Q       Let's call that DBS. Okay. A DBS carrier

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 has to collect signals at an uplink facility, is that  
2 right?

3 A That's right.

4 Q Okay. And at that point, that Satellite  
5 carrier has to obtain rights from Basic Cable Networks  
6 to take down that feed, is that correct?

7 A Yes.

8 Q And there is a transaction there between  
9 that DBS carrier and the Cable Network supplier, is  
10 that right?

11 A The Cable Network -- they can't just  
12 uplink anything they want, they have to have  
13 permission. And, so, yes, you'd have a contract that  
14 says, you know, we agree to have you carry our  
15 Network.

16 Q And the Basic Cable Network has got that  
17 signal up on a Satellite, C-band Satellite, right?

18 A Usually.

19 Q It's delivered to the dish of the KU  
20 carrier, right?

21 A Right.

22 Q And that's covered by the affiliation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 contract between the Basic Cable Network and the DBS  
2 carrier?

3 A Right.

4 Q Okay. Now, that is a point at which a  
5 price is paid by a Satellite carrier to the Cable  
6 Network, is that correct?

7 A Well, I don't know exactly what you mean  
8 about the point, but -- I don't know what you mean  
9 about physically -- you know, when the signal changes  
10 hands or whatever, but that's my understanding of what  
11 happens.

12 Q The Cable Network is responsible for  
13 getting the signal --

14 A To the uplink facility.

15 Q -- to the uplink facility, right?

16 A Yes.

17 Q Okay.

18 A Maybe they're not even responsible for  
19 getting it there, but just having it up on Satellite  
20 or, for all I know, they could deliver it by a  
21 fiberlink to the uplink facility.

22 Q But it's your understanding, isn't it,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that the KU carrier is not the one which launches a  
2 Satellite in order to bring up a Basic Cable Network  
3 and then down to the headend -- to the DBS uplink  
4 facility of the DBS carrier?

5 A The DBS carrier owns its own Satellite,  
6 and it takes down the signal that is already up there  
7 for the Cable Network at its uplink facility, and  
8 sends it up to its own Satellite, and then it goes  
9 from the Satellite down to the little dishes.

10 Q Okay. Now, just to see if we can draw the  
11 parallel, a Cable Television system operator has a  
12 similar receive-only dish taking down that same Basic  
13 Cable Network, is that right?

14 A Right.

15 Q And a Cable operator would call that his  
16 "headend"?

17 A Yes.

18 Q And then a Cable operator then distributes  
19 that to customers through a series of wires,  
20 amplifiers, fiber, microwave, whatever transport  
21 technology he chooses?

22 A That's right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 Q And then inside the home, there is a  
2 decoding box of some sort.

3 A Usually.

4 Q Usually. Now, the KU carrier, instead of  
5 using a wire to get from his uplink facility to a  
6 home, has a Satellite in geostationary orbit, right?

7 A Right.

8 Q So his distribution technology is going up  
9 to the Satellite, then down to, what?

10 A The little dishes.

11 Q The little dishes, the DBS dishes, and  
12 then that dish would be located maybe on the side of  
13 someone's house, or the roof of someone's house, or  
14 the yard.

15 A Right.

16 Q And then there is a wire that goes into  
17 the home, and there is a decoding device?

18 A That's right.

19 Q Maybe two of them, if they wanted to watch  
20 something different on a second set?

21 A It's my understanding you need a second  
22 box if you wanted a second set.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Q     Right. Okay. So, Cable and Satellite,  
2 they both have the dishes, they both have the  
3 distribution technology, they both have equipment at  
4 the subscriber premises, is that right?

5           A     Right.

6           Q     Now, you have not offered testimony on the  
7 cost to a DBS carrier of its method of transportation  
8 from the dish to the home, have you?

9           A     The cost to the DBS carrier from its  
10 Satellite --

11          Q     From the dish where it's collecting the  
12 signals to the home. You've not offered testimony on  
13 those costs?

14          A     No, except those costs would be the same -  
15 - except in the sense that I said they would be the  
16 same for a station, a retransmitted station, or a  
17 Cable Network.

18          Q     The same for the carrier, going from that  
19 dish to the home?

20          A     Right.

21          Q     You have not offered a quantitative  
22 assessment of what those costs are to a Satellite

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 carrier compared with a Cable operator, have you?

2 A Only -- no. The sentence that you pulled  
3 out about the higher net cost of distributing, that  
4 sentence was focused on -- and I think there's a  
5 footnote at the end of it on the next page, over on  
6 page 7 -- where they were really talking about Home  
7 Satellite dish people, the C-band people, not the DBS  
8 operators.

9 Q I see. So you're talking C-band here.

10 A Right. But then I also said as to the  
11 DBS, from the uplink facility, that same thing would  
12 have to be done whether you're talking about a Cable  
13 Network or a Broadcast retransmitted station.

14 Q Does a Broadcast station make arrangements  
15 to deliver its signal to an uplink facility of a KU  
16 carrier?

17 A I don't think that they do, but they  
18 could, or I think that it's the uplinker who delivers  
19 that signal.

20 Q So, if one wanted to get a particular  
21 Network signal from Prime Time 24, for example, it's  
22 Prime Time 24 that is putting that signal up on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Satellite, rather than the Broadcast station?

2 A Well, Prime Time 24 sells to C-band and  
3 DirecTV, right, and they put it up on Satellite. If  
4 they were only selling to DirecTV, then maybe they  
5 would just use a fiberlink. In other words, DirecTV  
6 doesn't have to take something down from the  
7 Satellite, it just has to get it to its uplink  
8 facility. It could come via fiber.

9 Q But I'm asking you what actually happens,  
10 who is responsible for incurring the costs of getting  
11 a Broadcast signal from a broadcast tower to a  
12 Satellite carrier. It's the Satellite carrier, isn't  
13 it?

14 A Yes.

15 Q Not the Broadcaster.

16 A No.

17 Q Whereas, if ESPN is selling to a carrier  
18 or to a Cable operator, isn't ESPN delivering the  
19 signal to the customer?

20 A Yes, but when ESPN sells to a C-band  
21 operator, where they have to do more work because of  
22 the C-band operator, they charge them more money for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 doing that. That is, ESPN doesn't just charge them  
2 the same prices they charge the Cable operator, they  
3 charge more.

4 Q To the C-band operator.

5 A To the C-band distributor, yes.

6 Q Do you know how much?

7 A Do I know how much more?

8 Q Yes.

9 A No. And ESPN can charge as much as it  
10 wants, since it is not subject to the FCC rules. It's  
11 not a vertically integrated operator but, if it were  
12 somebody that was vertically integrated, then they  
13 would be not allowed to charge more than the extra  
14 cost.

15 Q So, this is what you mean, I take it, when  
16 you testified earlier on page 5, that when Basic Cable  
17 Networks sell to Satellite distributors, the Networks  
18 incur extra costs of distribution and pass those extra  
19 costs on to Satellite distributors.

20 A Right.

21 Q And that's the premise for not backing out  
22 sort of the imbedded cost of Satellite transport

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 within the price of a Basic Cable Network that's  
2 quoted to a Cable operator?

3 A Right. The Cable operator pays the  
4 average price. The Home Satellite distributor to C-  
5 band paid a higher price that includes the extra cost  
6 that the Cable Network has in getting the signal to  
7 them.

8 Q Now, you say a higher price, but you don't  
9 know what that price is?

10 A Well, I know it's higher because there  
11 have been claims of price discrimination, and some  
12 involving the Satellite carriers as well. So, they  
13 must have been charging higher prices, or people  
14 wouldn't have brought the case to the FCC saying there  
15 is price discrimination going on where they are  
16 charging more to people who aren't allowed to charge  
17 more. So, they do charge more. I'm assuming that  
18 they're abiding by the law and not charging the people  
19 who are required to not charge more than the extra  
20 costs, are only charging the extra costs.

21 Q You are using the term "Satellite  
22 distributor" instead of "Satellite carrier", is there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 a difference there?

2 A When I'm talking about Satellite  
3 distributor, I mean somebody who is selling to the  
4 home -- all right -- and for a Satellite carrier, they  
5 could be reselling to someone else who is selling to  
6 the home.

7 Q So, something like National Program  
8 Service, that's a distributor, but not a carrier?

9 A I think that's correct. The way I was  
10 making the distinction was that United Video I thought  
11 of as a carrier, and Superstar I thought of as a  
12 distributor.

13 Q So, there's --

14 A Some carriers also are distributors and  
15 sell direct to the home.

16 Q  
17 But if we have a Satellite here and a Satellite  
18 carrier arranging for the transportation of the  
19 signals down, you're saying that there could be  
20 another party here which, in fact, retails to the  
21 home?

22 A That's right.

1 Q And then the Satellite carrier has to sell  
2 signal to NPS to distribute to the home?

3 A Right. NPS would be the equivalent of  
4 just being a marketer.

5 Q And so NPS is the one whose prices you are  
6 quoting in testimony?

7 A Well, and also Netlink, for example, does  
8 both. Netlink brings the signal up and sells it to  
9 the home.

10 Q This guy is a separate business. He might  
11 have a margin between what he is retailing for and  
12 what he's receiving the signal for from a Satellite  
13 carrier?

14 A Right, and his margin would cover the cost  
15 of dealing with the individual consumers, and placing  
16 the ads in Satellite publications, and so forth.

17 Q So you don't know what -- in this  
18 transaction, what margin the Satellite carrier has and  
19 what margin NPS has?

20 A Well, I think I do know that as far as  
21 United Video goes, and Superstar, and that's why I  
22 showed both their margins in my testimony.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 Q That is, in the C-band business?

2 A Yes, and that's what we're talking about  
3 here in this picture, is the C-band business.

4 Q This is the business that is declining,  
5 right?

6 A Yes.

7 Q Is this how it works in KU?

8 A In KU, the person -- the Satellite carrier  
9 may or may not be the DBS operator. That is, Prime  
10 Time 24 could be selling to DirectTV and DirectTV could  
11 be selling to the consumer, or DirectTV could be the  
12 carrier itself bringing the signal up and paying the  
13 copyright fee directly, and then also selling to the  
14 consumer.

15 Q When Basic Cable Networks -- let's suppose  
16 then this is a KU uplink, and there's another  
17 Satellite here in which a signal is coming down. This  
18 KU carrier is buying CNN from Time Warner Turner.  
19 What extra cost is CNN incurring to sell to reach this  
20 dish?

21 A Well, in the case of DirectTV, say, as far  
22 as physically transporting the signal, there is no

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 extra cost, as I understand it. There may be some  
2 other extra cost of the types that CNN has argued in  
3 its case against the -- well, as the defendant in its  
4 case against C-band distributors, but --

5 Q I'm talking KU here.

6 A Well, I understand, but I don't want to  
7 preclude there being some other extra costs, but  
8 physically there isn't an extra cost.

9 Q It's the same thing. CNN is up on  
10 Satellite, this could as well be right next door to  
11 a Cable headend, right?

12 A That's right. Physically, I don't see the  
13 extra cost.

14 Q Physically, same signal. So that when CNN  
15 is selling to a KU provider, KU Satellite carrier, it  
16 is delivering and covering the cost of transporting  
17 the signal from its studio to the dish?

18 A That's right.

19 CHAIRMAN GRIFFITH: Mr. Glist, we've been  
20 about an hour and 45 minutes. Why don't we take about  
21 a ten-minute recess, all right?

22 (Whereupon, a short recess was taken.)

1 CHAIRMAN GRIFFITH: All right, Mr. Glist,  
2 please.

3 BY MR. GLIST:

4 Q I wonder if we could just review where we  
5 are on the distribution arrangement. Let's start with  
6 an uplink for Cable News Network. This is an uplink  
7 that would be provided by CNN on its own, is that  
8 correct?

9 A Yes.

10 Q And it goes up to a C-band Satellite where  
11 a transponder is owned or leased for a long term?

12 A That's right.

13 Q And then off of the C-band Satellite, CNN  
14 could sell directly to a Cable system headend, for  
15 delivery to the dish.

16 A Right.

17 Q It can also sell directly to a deep dish,  
18 C-band, TVRO household, is that right?

19 A It could deliver the signal directly to  
20 the household, right. It could do the sale, but it  
21 doesn't usually.

22 Q And what usually happens in this event is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that third-party packages arise in the marketplace,  
2 like NPS, to aggregate these various signals and then  
3 try to market them to C-band households?

4 A That's right.

5 Q And, in fact, because there is more than  
6 one C-band Satellite -- let's make another one parked  
7 here and another one parked here -- this packager  
8 might assemble different feeds from different sources,  
9 not mechanically but in terms of representing these  
10 services, and say to the TVRO household, I will sell  
11 you 20 or 40 channels of C-band programming, right?

12 A Right. There's no physics involved in  
13 this.

14 Q No physics involved, right.

15 A In other words, CNN could do the same  
16 thing. They could sell things to other people through  
17 their home -- Turner Home Satellite, I think, is the  
18 name of the bureau.

19 Q Right. This company, it doesn't own this,  
20 it doesn't own this, it calls up the authorization  
21 center and says, here's the box number on the decoder,  
22 they've just bought these services, please authorize.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Well, in fact, I didn't think NPS actually  
2       made that call, I thought that they called Turner, who  
3       called the authorization center.

4           Q       Okay. But they do not incur their own  
5       costs for this arrangement?

6           A       That's correct.

7           Q       Now, let's take this feed of the C-band to  
8       Satellite down to a DBS control center instead, all  
9       right?

10          A       Like DirectTV.

11          Q       Like DirectTV. DirectTV will obtain an  
12       affiliation with all of the Basic Cable Networks that  
13       it wants to have in its package, is that right?

14          A       That's right.

15          Q       And then it will then uplink this to a  
16       single Satellite, a DBS Satellite --

17          A       Well, there are actually three of them,  
18       but, yes.

19          Q       There are three CONUS birds, right?

20          A       Well, DirectTV has three Satellites that  
21       are very close together, and -- that they use to send  
22       the signals down.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 customers?

2 A Well, NPS is marketing to customers as  
3 well as DirectTV, but DirectTV is doing more, right.

4 Q Okay. Let's move on to another aspect of  
5 the relationship between Cable Networks and their  
6 affiliates. You testified on direct that some Cable  
7 Networks offer what you are calling, I believe,  
8 "promotional" prices?

9 A That's right, to Cable operators.

10 Q Are you familiar with how Fox News markets  
11 itself to the Cable Television industry?

12 A Generally.

13 Q Is it fair to say that Fox News paid an  
14 up-front fee to Cable operators to launch -- to  
15 include Fox News within Cable packages?

16 A That's been reported as to some Cable  
17 operators, yes.

18 Q And is it in the neighborhood of \$10 or  
19 more for a sub?

20 A Yes, that's what was reported. You know,  
21 when I say reported, I mean, you know, in broadcasting  
22 articles. I don't mean in some annual report or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 something.

2 Q Right, reported in the specialty trade  
3 magazines on which you typically rely for  
4 understanding the industry.

5 A Right.

6 Q Is it fair to say that after Fox News  
7 entered into the market in that way, that there was a  
8 spillover effect to other Cable Networks?

9 A Other new Cable Networks also started  
10 offering large promotional consideration -- not as  
11 large as Fox News Channel, but it was also reported  
12 somebody -- Animal Planet was paying \$5. That's a  
13 spinoff of the Discovery Network, I guess it's just on  
14 animals, and that some other Cable Networks were also  
15 paying this to get on the limited capacity that Cable  
16 operators have on their systems currently. But, of  
17 course, that's not all of them, or not all of them are  
18 paying substantial consideration. History Channel,  
19 for example, isn't paying anything and is getting  
20 pretty good distribution because it seems to be the  
21 popular one now for people to be adding.

22 Q Isn't it being offered free for the first

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 several years?

2 A Very often, new Networks are offered to at  
3 least charter subscribers, people who sign on early --  
4 Cable operators with otherwise constrained capacity to  
5 put them on, they'll say, well, for the first few  
6 years, you could be free.

7 Q And that's true for History Channel, in  
8 particular?

9 A I'm not sure if that's true of the History  
10 Channel in particular. It may be.

11 Q You're not engaged in the actual  
12 negotiation of Cable affiliations with Cable Networks,  
13 are you?

14 A No.

15 Q Do you know the terms under which Cable  
16 multiple system operators will renew their affiliation  
17 agreements with Cable Networks?

18 A As reported in the trade press.

19 Q Is it your understanding that the terms of  
20 renewals between Cable Television MSOs and Cable  
21 Networks are often closely guarded confidential  
22 information?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 A Yes.

2 Q So that particular renewals may be taking  
3 place, of which you are not aware, in which other  
4 financial arrangements are being made?

5 A I don't know and, if I did, I certainly  
6 couldn't talk about it -- the terms of any  
7 confidential contract, that's right. I only know sort  
8 of the overall license fees. And some of these Cable  
9 Networks actually report their license fees. Until  
10 recently, CNN, for example, was one of them -- that  
11 is, it wasn't just Kagan's guess at what CNN's license  
12 fees were, they actually said them. Now that they're  
13 part of Time Warner, maybe they won't do that.

14 Q But when even license fees are reported,  
15 that doesn't necessarily include or exclude other  
16 aspects of the affiliation relationship, does it?

17 A It may or may not, depending on whether  
18 something is taken as a net of revenue or whether it's  
19 considered to be a cost.

20 Q Right. So, a particular Cable Network  
21 might report license fee revenue at this level whereas  
22 there is an expense item somewhere else on the income

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 statement, showing payments to a Cable MSO.

2 A That may be the case, but that would be --  
3 accounting rules, I'm sure, would govern that in some  
4 way, and I just don't know them well enough.

5 Q Does a Cable Network ever help to pay for  
6 or defray advertising costs of a Cable system?

7 A I don't think so.

8 Q Are you familiar with the term "marketing  
9 co-op dollars"?

10 A Do you mean if a Cable system -- you said  
11 defray costs. Do you mean if a Cable system will  
12 advertise my Network, will I give them back some of  
13 the money they spend doing that? Yes. That would  
14 happen. The same way a toy company would give a toy  
15 store money.

16 Q Right. So that under arrangements like  
17 that - -which are not unusual in the industry, are  
18 they?

19 A There's not -- unlike toys, there's not a  
20 great deal of marketing done by Cable systems, but to  
21 the extent that there is marketing, it could be  
22 reimbursed, in part. Usually, there is not a 100

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 percent reimbursement.

2 Q And that, in and of itself, is not limited  
3 to new Networks, is it?

4 A As a Cable consumer, I see very little  
5 advertising done by my Cable system to promote  
6 Networks, so I imagine that there is generally not  
7 that much that goes on.

8 Q You are basing your understanding of how  
9 much Cable operators advertise on your experience as  
10 a consumer?

11 A I'm saying that I haven't seen it as a big  
12 expense on their costs and, as a consumer, I don't see  
13 them doing a lot of advertising for established  
14 Networks.

15 Q Do you know whether established entities,  
16 like Home Box Office, for example, might offer  
17 marketing co-op dollars to Cable operators?

18 A I think Home Box Office is quite different  
19 than the Basic Networks because, with Home Box Office,  
20 you've got to get people to keep paying that much  
21 extra fee just for HBO or else they'll discontinue, so  
22 they spend a lot on marketing, both by themselves --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 they advertise on, you know, national television and  
2 in newspapers and in magazines and so forth, and they  
3 also try to get affiliates to do that locally.

4 Q How about Cable Networks owned by Time  
5 Warner, are you familiar with any arrangements they  
6 have with Cable operators on advertising costs?

7 A You mean like CNN?

8 Q Yes.

9 A I think that there is some limited amount  
10 of giving advertising co-op money -- that is, if you  
11 actually do the advertising, you get some of the money  
12 back. It's a way to localize your advertising. But  
13 I would see that as an advertising expense of the  
14 Network, not a money that's given to the Cable system.

15 Q But you're not involved in the  
16 negotiations of these deals, so you don't actually  
17 know whether marketing co-op dollars are used as a  
18 vehicle for offsetting license fees in particular  
19 deals, are you?

20 A I'm not involved in the negotiations.

21 Q You are familiar, are you, with TCI's  
22 financial performance over the last year?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Not specifically.

2 Q You are familiar with the Cable industry,  
3 but you haven't followed TCI's performance?

4 A I haven't followed financial performance,  
5 particularly.

6 Q Have you followed at all efforts by TCI  
7 executives to limit license fee increases by Basic  
8 Cable Networks?

9 A Yes.

10 Q Are you familiar with the rate increase  
11 rolled out by TCI in 1996?

12 A Generally.

13 Q Is it fair to say that TCI attributed the  
14 majority of those increases to programming cost  
15 increases?

16 A I thought that TCI's rate increase was  
17 part of one of those FCC social contract deals that  
18 wrapped up a whole lot of issues.

19 Q TCI didn't have a social contract.

20 A Well, then I'm mistaken.

21 Q So you don't know the basis for TCI's rate  
22 increases?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Well, if it didn't have a social contract,  
2       since mostly FCC does regulate these rates and you're  
3       only allowed to increase rates based on a kind of  
4       complex formula, that has to do with inflation and  
5       programming costs, so it would be -- programming costs  
6       would have had to have been part of it. But that  
7       could include not just the cost of existing  
8       programming, but as you put on more programming it  
9       could include that as well. I think you get something  
10      for -- the rate formula is quite complicated, but I  
11      think you get something if you add channels. You get  
12      to increase your price by a certain amount if you do  
13      add additional channels to the Cable system.

14           Q       When TCI increased its rates in 1996,  
15      didn't they suffer a 70,000 subscriber rolloff and a  
16      52-week low in share price?

17           A       The 70,000 out of their 14 million or so  
18      subscribers sounds familiar. The 52-week low in share  
19      price -- I know their stock hasn't been doing well,  
20      and that they've -- I have no idea whether it was a  
21      52-week low or not.

22           Q       Have you followed John Malone's comments

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 in public about his relationship with Basic Cable  
2 Network providers?

3 A Yes.

4 Q Has he made it clear that he wants those  
5 license fees to be limited, the increases to be  
6 limited?

7 A Sure.

8 Q Do you think that TCI has influence as a  
9 major buyer of Cable Network programming?

10 A Over other people's prices, or over its  
11 own?

12 Q Over the prices that would be charged by  
13 Cable Networks to it.

14 A To TCI?

15 Q To TCI.

16 A It certainly has some bargaining power as  
17 a large consumer, but it tried to take channels off  
18 some of its Cable systems, and it got pretty much a  
19 storm of protest on many of the channels and had to  
20 put them back on.

21 Q All of them?

22 A No, but it put back a lot the channels

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that were taken off.

2 Q Put some back on, and left others off.

3 A That's right, or it would put them back  
4 part-time. I think there are 11 systems that dropped  
5 C-SPAN, for example, and maybe you put them back on in  
6 eight of those cases, at least part-time.

7 Q Do you think that the price that is paid  
8 by TCI in license fees affects the average license fee  
9 charged by a Cable Network?

10 A That's a complicated question, but I think  
11 that -- let me give you an answer that I think is  
12 accurate, but I don't want it to be overstated in a  
13 way where this is a central issue, all right -- that  
14 is, it was a central issue in some recent litigation,  
15 for example.

16 I think that TCI influences its own price.  
17 I don't think that TCI has a great influence on the  
18 price that other people pay for Cable programming.

19 Q I wasn't asking that precise question.  
20 What I was asking is, if all that one has in  
21 calculating average license fee is an aggregate sum of  
22 license fees paid by the universe of multi-channel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 video program distributors, and one then tries to  
2 divide that by a number of subscribers, however one  
3 adjusts for piracy, wouldn't the price paid by TCI  
4 have an effect on that calculation?

5 A Oh, yes.

6 Q So that if TCI were successful in limiting  
7 price increases, it would have an effect on the  
8 average license fee?

9 A If it were successful, it would.

10 Q Does anyone know if TCI is going to be  
11 successful or not?

12 A Well, first of all, you have to understand  
13 that the price increase to TCI isn't necessarily --  
14 TCI isn't necessarily paying a price that was sort of  
15 the recent average -- do you know what I mean? So,  
16 what could be happening with TCI is that it was low  
17 and now a contract is up, it was a ten-year contract,  
18 and now we're going to come up with a higher price.  
19 I think that they are focusing more on those kinds of  
20 contracts. But I don't know yet whether TCI will be  
21 successful. So far, their strategy of taking Networks  
22 off doesn't seem to have worked, just as an outsider

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 looking at this from the popular or the industry  
2 practice.

3 Q But not as an insider looking at it from  
4 the perspective of a Cable MSO who is actually buying  
5 product at a certain price. You don't have that  
6 perspective?

7 A No.

8 Q At Footnote 3 of your testimony, on page  
9 3, you discuss in brief your reasons for not looking  
10 at the license fee paid by Cable operators under the  
11 Compulsory license.

12 A Right.

13 Q And as I understand Note 3, you say that  
14 one reason is that White areas might not have Cable,  
15 that's one reason.

16 A Well, a little bit stronger than might not  
17 have, are not likely to have Cable.

18 Q And the other is that Cable is likely to  
19 be offering local signals instead of distant, is that  
20 --

21 A That's right.

22 Q -- that's the gist of this footnote?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Right.

2 Q Okay. Those are the two points I wanted  
3 to explore with you. Now, Cable Television first got  
4 built in areas that are sometimes known as "classic"  
5 markets, is that right? Are you familiar with that  
6 term?

7 A Well, now they're known as classic  
8 markets. Then they were known as "hilly areas".

9 Q Hilly areas. Areas in which the reception  
10 of off-air signals was quite limited, or even  
11 nonexistent in some cases.

12 A That's right.

13 Q Now we call those "classic" markets.

14 A Yes.

15 Q That's where the industry first got built,  
16 correct?

17 A That's right, it was called "CATV", or  
18 Community Antenna TV, as this was going to bring in --

19 Q Those were the days. Now, the statute  
20 itself under which we're operating this Compulsory  
21 Satellite copyright license, has a definition of  
22 "White" area, doesn't it?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Yes. Well, I know it's written someplace.  
2       Whether it's actually in the statute, I couldn't  
3       swear.

4           Q       Well, it has a definition, I believe, of  
5       "unserved households", that's probably the term that  
6       is used. What is your understanding of what the White  
7       areas are, or unserved households are, that you're  
8       talking about in Footnote 3?

9           A       The only way that I define it -- and my  
10      total understanding is really based on my Footnote 1  
11      that says it's not served a Network or PBS station  
12      over-the-air or via Cable within the last 90 days.  
13      Now, I'm sure there's a specific definition of what  
14      "served over-the-air" is someplace, but I don't know  
15      that.

16          Q       And I'm not going to be testing you on  
17      that. I actually wanted to focus on the service via  
18      Cable within the last 90 days because I think you're  
19      saying that the White areas are very likely not to  
20      have Cable Television, right?

21          A       That's right.

22          Q       Well, I'm wondering why we would have a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 definition of White area that said that you could not  
2 serve a customer in a White area if you've been a  
3 Cable subscriber within the last 90 days, if it didn't  
4 have Cable in that White area.

5 A You mean, what was in the mind of the  
6 legislature that wrote the definition?

7 Q No, I'm not asking you to analyze  
8 Congress, I'm just asking you to approach this as a  
9 matter of reason. If there is an area between two  
10 hills, let's say, in which there is a home that has  
11 limited reception capability, and Congress says, and  
12 by the way, you can't have been connected to Cable in  
13 the prior 90 days, wouldn't that indicate that the  
14 areas to which Satellite carriers are marketing  
15 themselves, in fact, are passed by Cable?

16 A No.

17 Q For whatever reason would someone say you  
18 can't have had Cable in the last 90 days?

19 A Because Cable area is a sort of undefined  
20 term. That is, Cable usually has a franchise to serve  
21 a particular municipal area -- say, a township. But  
22 they may not actually physically string the wires over

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the whole town. And in your example, maybe the wire  
2 stopped up on the top of this hill. And if I were  
3 this home down here, perhaps I could get Cable if I  
4 would pay to have the wire extended all the way to my  
5 home. So, am I a home unserved by Cable? Well, maybe  
6 the Cable company would charge me -- like electric  
7 companies do as well -- \$1,000 to bring in that line,  
8 and that seemed like too much for me to pay, so I feel  
9 like I'm unserved by Cable.

10 So, it seemed to me that the reason for  
11 having some kind of a 90-day thing is at least you  
12 could see, all right, here's a yes-or-no question, did  
13 you get Cable within the last 90 days. If you have a  
14 question, are you served by Cable, that is an iffier  
15 question.

16 Q So, your understanding of White area --  
17 and, in fact, your Footnote 3 -- is premised on the  
18 idea that there's no Cable connection to the home at  
19 all, otherwise, it's not eligible?

20 MS. WOODS: Objection, Your Honor. I  
21 don't believe that's what she stated at all, that  
22 there was not any Cable connection to any of the homes

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 in White areas. I don't believe that's her testimony  
2 at all.

3 THE WITNESS: You just had to not be  
4 subscribing. So, I'm sure that you could have a home  
5 who didn't subscribe for 90 days, and maybe even  
6 subscribed 90 days ago and went without TV for three  
7 months and then got a DBS dish and legally got it, but  
8 I think the most likely case is that the person just  
9 isn't getting any -- when I said that Cable could be  
10 at the top of the hill, it could also be two miles  
11 away and completely not served by Cable.

12 I happen to live in one of these little  
13 areas, in a country home, and I am exactly in this  
14 little valley, and so I don't get TV reception, with  
15 the exception of an Independent UHF station, sort of  
16 that I consider to be outside TV markets, but it's not  
17 a Network station. And I'm not passed by Cable, not  
18 even close. It's about five miles away. And I'm sure  
19 they wouldn't come out to my home if -- they're not  
20 asking me to pay them to bring the whole five miles.  
21 If they were at the bottom of my road, then they might  
22 be asking me to pay something. And, so, I have a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 little Echostar Satellite dish, and I get the Network  
2 package through that.

3 BY MR. GLIST:

4 Q I need to make sure I understand what you  
5 understand by White area. Are you saying that a White  
6 area could include homes that used to be on Cable, and  
7 could still subscribe to Cable?

8 A I don't know the specific definition  
9 beyond what I've said here. I'm sure there are some  
10 gray areas in this, and I know there's been a recent  
11 settlement of disputes among the Networks and DirecTV-  
12 type people about White areas you can bring this into,  
13 and I think it's because there are these gray areas,  
14 and the Networks were saying on the one hand, what do  
15 you mean gray area, you're bringing it right to the  
16 heart of some city where a person could receive it,  
17 and Satellite carriers are saying, no, these people  
18 really can't get good TV reception, so they worked out  
19 a settlement.

20 Q What did you mean a moment ago when you  
21 said, well, maybe the home had even disconnected the  
22 Cable and waited 90 days before --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           A       Well, if the definition is can't have  
2       subscribed in 90 days, I'm sure that could --

3           Q       That could cover it.

4           A       -- that could cover it, if that's really  
5       the definition. Or maybe I just moved into the area,  
6       so I haven't done anything in the last 90 days in this  
7       place. Maybe that would count as a loophole. And  
8       that's why I considered that it could be that Cable is  
9       in this area, but I think it's very unlikely that for  
10      most of the households, that that's what we're talking  
11      about because, as you said with the classic Cable  
12      systems, we know that they have extraordinarily high  
13      penetration. In areas where you can't get TV, there  
14      could be penetration as high as 85 or 90 percent, even  
15      if the income level isn't high, because you didn't  
16      have other television. So, I think it's extremely  
17      likely that somebody is going to go out and buy a  
18      Satellite dish, who would not subscribe to Cable TV.

19          Q       Have you looked at all at the number of  
20      Satellite customers who are in areas served by Cable?

21          A       Yes.

22          Q       And how many of those people take Network

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 signals?

2 A I haven't looked at that part of it. I  
3 know that about 50 percent of DirecTV subscribers, for  
4 example, live in cabled areas, or they say this in  
5 response to surveys, and some of them even still  
6 subscribe to Cable for the local signals, but I don't  
7 know how many of them, if any, are doing something  
8 illegal and taking the Networks when they are not  
9 supposed to.

10 Q I'd like to ask you to make an assumption  
11 that the statute includes within the definition of  
12 "unserved household", homes that are passed by Cable,  
13 have Cable as an option, but have not subscribed to  
14 Cable within the past 90 days, and also meet whatever  
15 that off-air reception test might mean in the Act.  
16 Are you with me -- that an unserved household could be  
17 passed by Cable and, in fact, would have the option of  
18 receiving broadcast signals via Cable.

19 A I think we already assumed that, that they  
20 could be, but that would not be the bulk of these  
21 people.

22 Q I understand you're saying it wouldn't be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the bulk, but you don't have the numbers on it, so I  
2 just want --

3 A Well, I do have some numbers. I do have  
4 numbers of people who are DirectTV subscribers, who say  
5 they are living in uncabled areas -- 50 percent.

6 Q I understand, and I want to focus on the  
7 other half.

8 A The half that live in the Cable area?

9 Q Yes.

10 A All right.

11 Q Are you familiar with the must-carry law  
12 relating to PBS, or to Public Broadcasting stations?

13 A Generally.

14 Q Is it fair to say that a Cable Television  
15 operator is required by law to import a distant PBS  
16 station, if there is not a local PBS station available  
17 to his headend?

18 A I can't answer that question except to say  
19 that I know there are these odd rules about what's  
20 counted as local and distant for purposes of must-  
21 carry versus for other purposes. So, I thought there  
22 were cases even where you had to carry a station, but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 then had to pay some Cable Compulsory license. It's  
2 just the two laws weren't evened up right around the  
3 margins of certain places that had to do with distance  
4 versus whether you were in the DMA, but I don't know  
5 the specifics of it.

6 Q You don't know whether Cable is required  
7 to import a distant PBS, so let me just ask you, do  
8 you know whether Cable operators do, in fact, carry  
9 distant Public Broadcasting Stations?

10 A I don't know for a fact that they do.

11 Q So, when you reached your conclusion about  
12 ignoring what Cable pays for a broadcast PBS station,  
13 you did not know whether Cable was required to import  
14 one, and you didn't know whether Cable ever did import  
15 a distant PBS station?

16 A No, I just said that there is a price for  
17 doing it. That's why I didn't look at the price for  
18 doing it because it would, in most cases, we're  
19 talking about a local station that's being included,  
20 or one of those things that's "semi-local", shall we  
21 call it -- that is, it's not too distant, but it's  
22 distant under one set of rules and considered local

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 under another set of rules.

2 Q Are you now saying that you will accept  
3 the fact that Cable carries both local PBS and distant  
4 PBS, or are you saying you don't know whether Cable  
5 carries distant PBS?

6 A I don't know -- when you say Cable -- I  
7 mean, in general, people aren't carrying it. Are  
8 there some Cable operators that are carrying it? I  
9 don't know whether there are or not.

10 Q You don't know. Okay. If a Cable system  
11 carries a local PBS station, how much does he pay  
12 under the Compulsory license?

13 A PBS is covered only by must-carry, not by  
14 retransmission consent. So, he has to carry it, and  
15 usually not only has to carry one, but maybe has to  
16 carry three or four, depending on the area.  
17 Certainly, my Cable system has to carry more. But he  
18 doesn't have to pay for doing that.

19 Q Okay. He doesn't have to pay for doing  
20 that. Do you know -- you have some familiarity with  
21 Cable copyright?

22 A Some.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q Okay. I don't want to extend beyond those  
2 limits, but do you know what a Cable operator would be  
3 required to pay for carriage of a distant PBS station?

4 A I thought -- and I think this is correct,  
5 but I'm not 100 percent sure -- that a PBS station is  
6 counted as a quarter of a distant signal import, and  
7 otherwise the same rules would apply. In other words,  
8 just like a Network station is counted as a quarter of  
9 a distant signal import in Cable, whatever the rate is  
10 -- and the rates vary -- depends on what you charge  
11 for the package that you included, and whether it's  
12 the first or second, and whether you're a little Cable  
13 operator or a big Cable operator -- but those rules  
14 would apply, and the only difference is, whatever the  
15 rule is, you only count this as one-quarter of a  
16 signal.

17 Q Now, suppose that you have, in one of  
18 those valleys, a Cable operator who is carrying a  
19 distant PBS station, and its Satellite carrier who is  
20 downlinking a distant PBS station, wouldn't you want  
21 to look at the price paid by the Cable operator for  
22 that distant PBS station, if you wanted to judge what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the consumer demand might be in that valley?

2 A No.

3 Q Why is that?

4 A Well, first of all, we're not concerned  
5 with what the consumer demand is in the valley, we're  
6 concerned what the consumer demand is nationwide in  
7 the White area. And I think that this valley is a  
8 very hypothetical example, it's a very tiny fraction.

9 Second, we're looking at overall demand by  
10 the potential Satellite consumer. So, it doesn't  
11 matter what the Cable operator pays, it matters what  
12 the Cable operator charges the consumer in the valley  
13 if they want to get Cable. And so they don't sell the  
14 distant PBS station by itself in any case that I would  
15 be familiar with, since I don't know whether they have  
16 a distant station, but I haven't seen anybody selling  
17 single stations unless they're in some kind of ala  
18 carte tier. And they might be charging in order to  
19 get Cable, you know, \$30, say, or they might be  
20 charging \$10 for Broadcast, Basic, and some other  
21 prices for other things, depending on who your Cable  
22 operator is and how he's deciding to package his

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 signal.

2 So, I think that the relevant price to the  
3 consumer in that valley, if you want to just look at  
4 that consumer, is how much they have to pay the Cable  
5 operator, or how much then they would have to pay the  
6 Satellite operator, and how much it costs for a dish,  
7 and do I have to pay to bring the line in on Cable.  
8 So, it's a different set of costs, not what the Cable  
9 operator is paying.

10 Q In the example that I'm trying to offer,  
11 it's not a line extension areas, it's an area already  
12 passed by Cable. But you're saying that for your  
13 purposes you would want to look at package versus  
14 package and not channel versus channel.

15 A Exactly, and signal versus signal because,  
16 as we said, the distant signal may not be so distant.  
17 In other words, it may be from 70 miles away or  
18 something, the next biggest city to me, versus from  
19 Denver, and I'm in New York.

20 Q Are we talking distant PBS?

21 A Right.

22 Q I thought you just indicated that you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 didn't know distant PBS importation, but now you're  
2 saying if it's there, it's from an adjacent market and  
3 not off Satellite?

4 A No, I said that I did understand that  
5 there's some rules about semi-distant -- that is,  
6 distant for some purposes and not distant for others.  
7 And I assume that if a Cable operator had no PBS  
8 signal in its local area but had to carry one, it had  
9 to carry one close by, not one from 3,000 miles away.

10 Q Why would you assume that if you aren't  
11 familiar with the distant signal importation rules and  
12 the must-carry?

13 A I said I was a little bit familiar that  
14 there were these two sets of -- you know, two  
15 definitions of what's local.

16 Q And what are those two different sets?

17 A One is what's local for must -- or what  
18 you have to carry, anything in your DMA, and the other  
19 is -- that can be received with a good signal at your  
20 headend, and the other has to do with distance

21 Q Is that the test applied to Public  
22 Broadcasting?

1           A       I don't know exactly. I do know that  
2 there are some stations that fell in the cracks with  
3 two different definitions, and that's really the  
4 extent of my knowledge. If you know what the rule is  
5 --

6           Q       I'm not the one testifying today, so we'll  
7 go on to --

8           MS. WOODS: Objection, Your Honor. If  
9 he'd like to show her these rules and actually have  
10 her look them -- she's obviously seen them at some  
11 point in the past -- and then continue to testify  
12 without looking at them, I think that would be fine  
13 but, otherwise, I really think this ought to stop at  
14 this point.

15           MR. GLIST: I had just volunteered to move  
16 on, and that's what I aim to do.

17           CHAIRMAN GRIFFITH: We accept your offer.

18                   (Laughter.)

19           BY MR. GLIST:

20           Q       You testified that the last increase in  
21 royalties had no effect on Satellite carriers, did I  
22 understand that correctly?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       I think I said there was no significant  
2 adverse effect on Satellite carriers.

3           Q       No significant adverse effect. And is the  
4 basis for that, that as long as the number of  
5 customers is growing, then there is no adverse effect,  
6 is that what you're saying?

7           A       Well, I did look to see whether the number  
8 of signals dropped, that would be a quantity measure.  
9 The quantity goes down when the price goes up. I  
10 looked to see if the number of customers was down  
11 compared to what you would expect it to be in a  
12 growing market, so was it continuing to grow. And I  
13 also looked at sales in process of United Video.

14          Q       Okay. Well, let's look at those three.  
15 Now, did the number of Superstations drop?

16          A       Between -- I have a particular table on  
17 this, so let me take a look. Between 1991-2 and --  
18 that's the second half -- and 1992-1 -- that's the  
19 first half -- that's when the -- right in the middle  
20 of -- that was May that the rates changed, I think,  
21 May of '92, there were exactly the same stations were  
22 carried. And also exactly the same stations were

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 carried in the next quarter, again, with the possible  
2 exception of some particular CBS Networks which, from  
3 one station to another, as Network affiliations  
4 switched.

5 A KTBT was dropped in '95, when it switched  
6 from being an Independent station to being a Network  
7 affiliate.

8 Q And that switch would have made it less  
9 expensive for Satellite carriers to continue carrying,  
10 is that right?

11 A Would have made it less expensive and less  
12 desirable for people who were looking for Independent  
13 station programming.

14 Q When you looked at the growth of  
15 subscribers during the period that you looked at, are  
16 you just saying that as long as the numbers are  
17 growing, there's no adverse effect?

18 A Would you repeat the beginning part of the  
19 question?

20 Q For the period of time that you were  
21 looking for adverse effect, are you reaching the  
22 conclusion that there's no adverse effect merely

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 because the number of customers continued to increase?

2 A I described three tests. One of the tests  
3 is this middle one -- alone, together with the others,  
4 so it couldn't be merely because since there's two  
5 other tests but, within this test, not just that they  
6 increased, but that they increased basically along  
7 with Satellite growth. In other words, it wouldn't be  
8 surprising for it to go up, given that there were more  
9 Satellite dishes out there and more Satellite  
10 subscriptions. So, you would expect it to go up even  
11 if it wasn't doing so well, it just wouldn't go up  
12 kind of along with everything else.

13 Q Do you know if something else happened in  
14 1992 that affected the subscription rate to Satellite  
15 systems?

16 A For C-band, do you mean?

17 Q For either. I'm just trying to determine  
18 what you --

19 A Well, I think that all along here there  
20 has been a tightening of the encryption standards.

21 Q Yes. And in 1992, didn't General  
22 Instruments go to a new scrambling system?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       I know it was generally during the period,  
2 I don't know that it was in 1992.

3           Q       And when people in Satellite tighten up on  
4 encryption, doesn't that flush thieves out of the  
5 woodwork into the universe of subscribers?

6           A       Yes. When I say subscribers, remember,  
7 I'm talking about a home with a subscription. They  
8 don't necessarily have to subscribe to retransmitted  
9 stations, they just have to subscribe to something.

10          Q       I understand that, and I'm just asking you  
11 whether in the same time period was when GI shifted  
12 over to a better encryption in order to catch thieves  
13 and make them pay.

14          A       Well, as I think I said, I didn't know  
15 that it was exactly '92, but I knew that in general  
16 that's one of the reasons why there's an increase in  
17 the number of C-band subscribers during this period,  
18 and that's why I looked not just at the number of  
19 subscriptions to retransmitted stations, but  
20 subscriptions to retransmitted stations relative to  
21 the number of total subscription -- subscribing homes.  
22 So, if subscribing homes goes up, then you would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 expect retransmitted stations to go up to just stay  
2 the same and, in fact, that happened.

3 Q If you could turn to Footnote 11 on page  
4 6.

5 A Sure. (Complying.)

6 Q I have a question about the second to the  
7 last sentence, which says, setting a fee based on  
8 regular prices rather than promotional prices will not  
9 discourage Broadcast stations that want to expand  
10 distribution via Satellite because they are free to  
11 negotiate rates below the Compulsory level.

12 Could you explain what you mean by that,  
13 because they are free to negotiate rates below the  
14 Compulsory level?

15 A Yes. It's my understanding that the  
16 Compulsory copyright allows anyone who wants to  
17 retransmit to a Satellite home any station they want,  
18 as long as they pay the Compulsory fee. But that's  
19 not the only way you could get to retransmit a  
20 station. You could negotiate with a station and say,  
21 would you like to be retransmitted by me and, if they  
22 say yes, work out a private deal.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q Okay. Let's take that example. In order  
2 for a private deal to take place outside of the  
3 Compulsory license, the station, the seller in this  
4 case, would have to have the copyrights to give to the  
5 Satellite carrier, wouldn't it?

6 A Yes.

7 Q Do you know whether the stations that are  
8 uplinked by Satellite today, have all the rights  
9 necessary to clear their broadcast day in the  
10 Satellite market?

11 A I think that they generally have not  
12 obtained those rights, although some of the stations  
13 have some of those rights.

14 Q And if they do not have all of those  
15 rights, have not bargained for them, then they would  
16 not be in a position to issue a private license today,  
17 would they?

18 A Well, they would be in a position to  
19 bargain for them and then issue a private license.

20 Q If they could obtain those rights from the  
21 various program suppliers.

22 A That's right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 Q These are the same Program Suppliers who  
2 fight among themselves in distribution proceedings?

3 A The Program Suppliers and Music and  
4 whatever fight among themselves in distribution  
5 proceedings, but I don't see that that has to do with  
6 -- we're talking about a particular Program Supplier,  
7 not the MPAA, but Mr. Jones who made this program and  
8 has the program rights.

9 Q Wouldn't it take just one Mr. Jones to say  
10 no to keep a station from clearing its entire  
11 broadcast day?

12 A Well, I think the station could black out  
13 those programs the same way they do wiht Syndex-proof  
14 stations -- that is, they put in another program over  
15 the program that they're airing in their local market,  
16 so presumably they could do that.

17 Q So they would have to black out various  
18 parts of their program day and send whatever is left  
19 over up on the Satellite?

20 A No, when they black it out, they put  
21 something else in its place. I mean, very  
22 occasionally, with respect to some sports, you tune in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 and, you know, it has like a little box saying, we  
2 don't have this, go tune in to something else. But  
3 mostly, like when WOR was up on the Satellite, it was  
4 Syndex-proof, it was a UPN affiliate, and so it had  
5 like the Star Trek Voyager shows, and so forth.  
6 Instead of putting them out to count as a Syndex-proof  
7 station, it had Baretta, and B.J. and the Bear, you  
8 know, old shows that its uplinker or it put in its  
9 place.

10 Q Suppose a Network station could not get  
11 its prime time feed cleared by program owners, it  
12 would then not have the same prime time to sell for an  
13 uplink, would it?

14 A No. If not, then the Network would have  
15 to be the one who was trying to get that distribution  
16 and do the negotiations.

17 Q So, as we sit here today, there is not a  
18 clearance mechanism that exists, that would allow this  
19 to happen if the rate were too high, it would have to  
20 evolve?

21 A Well, this is a two-part sentence. One  
22 is, if you wanted -- if a Broadcast station wanted to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 encourage that expansion, if it wanted to, it could  
2 get those rights, or it could put on different  
3 programming the way TBS has done in order to sell its  
4 signal or have its signal sold for it nationwide.

5 Q But if the price were set too high, you're  
6 not saying that the station would then be able to just  
7 negotiate a license rate for that same fee, that you  
8 may have to substitute programming, blackout some, and  
9 it may not end up being the same profit, is that  
10 right?

11 A I'm not saying that, nor am I saying that  
12 Broadcasters want to expand secondary retransmission.  
13 A few have, like WTBS and WGN, but others haven't  
14 seemed to want it.

15 Q On page 10 of your testimony, you focus in  
16 on ala carte prices, is that right?

17 A Now we're talking about trying to find out  
18 what price Satellite homes pay for Cable Networks or  
19 Network stations and PBS retransmitted stations,  
20 right.

21 Q Did I understand your testimony to be  
22 saying that, well, the ala carte prices don't vary

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 depending on the copyright fee, was that part of your  
2 analysis?

3 A Well, part of my analysis was, yes, the  
4 copyright fee is 6 cents in the one case, and 24 cents  
5 for the Networks, and yet they are charging similar  
6 prices for those.

7 Q And from that, you are concluding -- not  
8 exclusively from that, but from this piece of evidence  
9 you are concluding that an increase in program costs  
10 would not cause adverse harm to the carriers?

11 A Yes.

12 Q I want to ask you whether -- in retailing,  
13 whether retailers ever price their products with  
14 simplicity to the consumer in mind?

15 A Yes, they do.

16 Q So that they might spread costs across a  
17 product line in order to reduce customer confusion?

18 A In other words, rather than -- the example  
19 I used was one where they actually had not that  
20 simplified way of marketing, but they gave what some  
21 consumers might like, a sort of, well, pick your own  
22 package, and there's going to be a different price for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 each thing that you pick, so that A&E is going to cost  
2 you 95 cents, but Discovery will cost 40. In others,  
3 different prices for different stations.

4 Q Right. But I'm asking you about retailing  
5 strategy now. Whether -- suppose I go to the  
6 supermarket, and I discover that all the boxes of  
7 Kellogg's cereal are priced at \$3. And the individual  
8 cost components might vary, but it would allow  
9 Kellogg's to advertise \$3 a box, right?

10 A They don't do that, but they could.

11 Q They could. Well, let's focus a little  
12 bit more in on the multi-channel marketing world.  
13 Let's take Cable Television installation.

14 When a Cable operator comes to serve your  
15 home and discovers that you are 250 feet from the  
16 nearest distribution line, and it's going to cost him  
17 \$200 to do an installation. He might, in fact, have  
18 a price out there of \$20 for the install, right?

19 A He might, or he might decide to charge the  
20 higher price, as some of my colleagues have who live  
21 in more exurban areas have found.

22 Q Well, let's come closer into town then.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Suppose the distribution plant is running down the  
2 street, but inside of your home is more difficult to  
3 wire than inside of my home.

4 A Sure, they could use an average kind of  
5 price, sure.

6 Q So, their customer service  
7 representatives, when they are called up by a  
8 customer, the CSR can say \$19.95 for installation,  
9 sight unseen, right?

10 A Right.

11 Q So, when the installer gets out there, it  
12 might in fact cost the operator \$50 for you, and \$10  
13 for me.

14 A Right, and they are averaging out their  
15 cost. Right. They could be doing that, definitely.

16 Q Averaging out their cost. And Cable  
17 operators have the right to do the same thing when  
18 they put a converter in the home, don't they? They  
19 can average converter costs across converters?

20 A Yes.

21 Q So that I might have an old, depreciated  
22 box in my home, and you might have a new higher-end

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 box in your home, but we're both paying \$2.50.

2 A You know, I'm not sure if they can do that  
3 for the different kind of box, but let's say new  
4 versus old, yes.

5 Q Now, the fact that they have averaged  
6 their prices for the retail price point, does that  
7 make their input costs irrelevant?

8 A No.

9 Q So that the input costs may, in fact,  
10 affect their business, but you wouldn't necessarily  
11 see it if the retail price point has been averaged.

12 A If I was looking at something that was  
13 averaging it, I wouldn't see it, right.

14 Q Right. And so if -- suppose as Satellite  
15 carrier who is retailing services wanted to offer a  
16 simple price plan for customers, and he did not want  
17 to therefore distinguish between a 6-cent input cost  
18 and a 14-cent input cost. Would that be a rational  
19 business decision?

20 A It could be. They certainly sell in  
21 packages where, you know, 40 channels for \$20, or  
22 something like that. But the particular example that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I looked at was not that, rather, they charged  
2 different prices for different Networks.

3 Q And you're just saying that because the  
4 difference wasn't so great, you were going to assume  
5 that an increase in the input cost would not affect  
6 it?

7 A No, I'm just saying that my example was  
8 not the kind of case that you are postulating of the  
9 simple rule. In fact, they charge \$1 for USA and  
10 \$1.40 for TNT. I mean, they had different prices for  
11 each Network, not the same price for everything.

12 Q I'm asking whether the retail prices  
13 always reflect the specific input cost of that  
14 particular channel, or whether they might get spread  
15 across other channels?

16 A They might get spread across other  
17 channels, in a sort of simplified plan, right.

18 Q I wanted to focus next on your discussion  
19 of selling Network signals in White areas. I  
20 understood the thrust of your testimony to be maybe  
21 it's a smaller universe of customers, but so what.  
22 Satellite carriers sell services that get even lower

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 penetration than Networks.

2 A Well, that might be overstating it, but  
3 not quite so what. It doesn't seem to be the be-all  
4 and end-all, just because it's a smaller universe.  
5 There are others that are similarly small, and maybe  
6 even others that are smaller. I don't think I pointed  
7 out any others that were smaller.

8 Q Okay. Now, let's take a service that is  
9 not subject to White area restrictions. Could a  
10 Satellite carrier include that service in a package  
11 available nationally?

12 A Yes.

13 Q Could the sales agents of a carrier try to  
14 sell that to every customer who walked in the door?

15 A Yes.

16 Q He would not have to inquire about  
17 availability of off-air reception, or Cable  
18 subscription in the last 90 days?

19 A Right.

20 Q He would not have to report that customer  
21 to the Networks on a monthly basis?

22 A Well, they would have to report his number

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of customers to the Networks on a monthly basis, and  
2 some Networks require you to tell them who your  
3 customers are, in some way.

4 Q I'm sorry, let me focus -- I'm talking  
5 about reporting to ABC, CBS, and NBC.

6 A Of course, he wouldn't have to tell them  
7 how many subscribers he had to CNN.

8 Q And could a terrestrial Broadcast  
9 affiliate launch a challenge to that customer for  
10 taking this signal that is not subject to White area  
11 restriction?

12 A No.

13 Q You are obviously familiar with the White  
14 area compliance scheme in the statute for the sale of  
15 Network signals?

16 A I don't think so because maybe -- what do  
17 you mean, the White area compliance scheme?

18 Q Well, are you aware that signals, Network  
19 signals that are sold to White area households have  
20 certain compliance mechanisms written into the law,  
21 with which Satellite carriers must comply?

22 A Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q And do those procedures include selling  
2 only to compliant households, number one?

3 A Yes.

4 Q And then reporting on a monthly basis to  
5 the Broadcast Networks themselves?

6 A Well, I'm not sure that -- to what extent  
7 the reporting is done. I mean, whether everybody is  
8 with a list that's sent over every month. I don't  
9 know whether that happens or not.

10 Q So, you have not really tried to estimate  
11 the cost to a carrier of complying wiht White area  
12 restrictions in preparing your testimony?

13 A Not except to look more generally at other  
14 kind of restrictions that people face in taking on  
15 other programming. You know, you put on Spice or  
16 something, and maybe you open yourself up to a suit of  
17 I'm showing pornography in Alabama. I mean, there are  
18 lots of risks that people take when they put on  
19 particular programming, and they sometimes have to  
20 report who their customers to the Cable Networks as  
21 well. So, I thought that the main difference was the  
22 size of the area to focus on, but I did consider to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 some extent these other requirements.

2 Q But in considering to some extent those  
3 other requirements, you have not determined what is  
4 actually done in terms of the compliance and  
5 monitoring of White area rules?

6 A No.

7 Q You also made the comparison, I believe,  
8 with Premium Channels. Premium Channels will  
9 sometimes simply split proceeds between a Cable  
10 operator like HBO.

11 A No, I don't believe they split proceeds.

12 Q What was the comparison you were trying to  
13 make? I thought you had said Premium Channels might -  
14 -

15 A Oh, the programming cost for Premium  
16 Channels including not just HBO, but sometimes  
17 channels like -- more specialized programming, the  
18 Golf Channel, or some foreign language programming, or  
19 something like that. The price that they charge  
20 amounts to a relatively high proportion of the retail  
21 price, not  
22 that they split proceeds.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Split proceeds might occur in Pay-Per-  
2 View, sort of the theater is selling to splitting the  
3 proceeds wiht the movie is sort of the background that  
4 comes from, but it's more likely that there actually  
5 is a price per subscriber, not a percentage that is  
6 used.

7 Q Premium and Pay-Per-View is a different  
8 arrangement, different economic arrangement than Basic  
9 Cable Nets, isn't it?

10 A Yes.

11 Q I believe that you also, a few minutes ago  
12 when we were talking about impact, you had said, I  
13 looked at carriage of the signals, I looked at growth  
14 of subscribers, and I looked at profit.

15 A Yes.

16 Q I wanted to turn to profit now.

17 A Okay.

18 Q The figures that you cite in your  
19 testimony are on C-band?

20 A I believe United Video was only C-band,  
21 yes.

22 Q Do you have any DBS profit figures in your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 testimony?

2 A Well, the only thing that I have about DBS  
3 in my testimony is analyst estimates of what the costs  
4 are and things like that, but not -- you know, they  
5 are not reported. They are not public.

6 Q And the analyst estimate that you looked  
7 at was the Morgan Stanley '95 report?

8 A Well, that's the one that I cited in my  
9 testimony.

10 Q Right. And didn't that indicate that even  
11 on a cash flow basis, they were cash flow negative?

12 A Yes, they had just started up, right. I  
13 mean, that wouldn't be surprising for anyone who was  
14 just starting up.

15 Q Right. And when we say cash flow  
16 negative, that means earnings before interest, taxes,  
17 depreciation, and amortization?

18 A Right.

19 Q And so that does not even account for  
20 depreciation of plant, or amortization of intangible  
21 investments, or taxes?

22 A Right, exactly. That's -- but it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 reflective of their startup status.

2 Q Is it fair to say that the analysts are of  
3 the view that none of the DBS carriers are even  
4 breaking even today?

5 A Well, they are all in startup status.  
6 Yes, I think that's the case.

7 Q That they are not breaking even today?

8 A Well, I don't know about Prime Star, but  
9 I think that it's true of -- DirectTV started in '94.  
10 Echostar started in '96. So, they are all just in  
11 their startup time.

12 Q I wanted to show you one analyst's view of  
13 the DBS business from the Washington Post on February  
14 25, 1997, which I ask be marked as SBCA 29-X.

15 CHAIRMAN GRIFFITH: SBCA 29-X.

16 (Whereupon, the document was  
17 marked for identification as  
18 Exhibit No. SBCA 29-X)

19 BY MR. GLIST:

20 Q You're certainly welcome to read the  
21 entire article, but the only part I wanted to ask you  
22 about was the sentence that begins as the very last

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 sentence in column two on page one, and carries over  
2 to the beginning of the next page. I will give you a  
3 moment to look it over.

4 A (Perusing document.) I've read the  
5 sentence.

6 Q Okay. The sentence that I was pointing  
7 out to you is a quotation in the Post which reads:  
8 Nevertheless, analysts have warned that four DBS  
9 competitors were chasing two key potential customers.  
10 Larry Gerbrandt, an industry analyst with Paul Kagan  
11 Associates, Inc., in Carmel, California, said the  
12 industry would need 12 million subscribers just for  
13 all the current players to break even.

14 I wonder if --

15 A Excuse me, wouldn't the four players --  
16 that's DirectTV, Primestar, ASkyB/Echostar, and  
17 Alphastar -- would that be the four?

18 Q Those are certainly the four indicated on  
19 the facing page.

20 A Right, I now see it in the box. In the  
21 box, it says each of them.

22 MS. WOODS: I did not think that the ASkyB

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 merger was included among the four.

2 CHAIRMAN GRIFFITH: Echostar is in the  
3 box.

4 MS. WOODS: Correct, but not as merged  
5 with ASkyB.

6 THE WITNESS: No, but this is the  
7 announcement of it, so I think this is -- News Corp.  
8 is, instead of using its own and be a fifth one, it's  
9 going to be one of the four who are there.

10 MR. GARRETT: Excuse me, Your Honor, just  
11 so there's no confusion in the record, Mr. Gerbrandt  
12 will be here to testify on Tuesday, and counsel is  
13 certainly free to ask him then as to what he meant by  
14 that and how he came up wiht it. I hate see a witness  
15 who has been shown this for the first time this  
16 morning, being asked questions about the meaning of  
17 what Mr. Gerbrandt, my witness, has been quoted as  
18 saying.

19 CHAIRMAN GRIFFITH: Are you objecting then  
20 to the question?

21 MR. GARRETT: My concern here is simply  
22 that I don't want the characterizations of what Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Gerbrandt said here either by the witness or by  
2 counsel here, because they are not either the witness'  
3 words and they are not counsel's words, they're Mr.  
4 Gerbrandt's words. And when we all sit down to do  
5 Proposed Findings of Fact, I would hope that we would  
6 look at Mr. Gerbrandt's testimony and not at this  
7 testimony for the sake of what this means. That's all  
8 I'm saying.

9 CHAIRMAN GRIFFITH: Well, go ahead and ask  
10 the question, Mr. Glist, and let's find out what it  
11 is.

12 BY MR. GLIST:

13 Q Is this assessment of the DBS business  
14 consistent with your understanding of the current  
15 financial status of the industry?

16 A That they would need 12 million homes?

17 Q Just for all the current players to break  
18 even.

19 A I think it is consistent. Twelve million  
20 homes are forecast for 1999. That's a pretty short --  
21 in other words, it wouldn't take them long to get to  
22 12 million homes. And as I say, Murdoch was talking

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 about 20 million in five years. I think that this is  
2 seen as the startup phase, and they are expected to  
3 get to the break-even -- you know, maybe more quickly  
4 than some of the Cable operators got to their break-  
5 even point.

6 Q And there's some debate among analysts  
7 about exactly how quickly or slowly DBS will grow,  
8 isn't there?

9 A Yes.

10 Q And some have projected lower than this,  
11 some have projected higher than this -- you said, for  
12 example, 12 million by 1999 -- some have said it's  
13 going to take longer than that?

14 A There has definitely been different ones.  
15 The most recent numbers -- and I did look to see if I  
16 could find very recent things -- the Satellite  
17 industry said 7 million by the end of '97 recently,  
18 that's a 1997 estimate. And there was recently a  
19 Sanford Bernstein report that was released that was a  
20 little hard to decipher, but it looked to me like they  
21 were getting 12.5 million in 1999. And I haven't seen  
22 any other 1997 estimates.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q The last area I wanted to explore with you  
2 is Public Broadcasting itself. I am correct, aren't  
3 I, that Public Broadcasting relies in part on taxpayer  
4 funding?

5 A There are government contributions made to  
6 some of the Public Broadcasting entities.

7 Q At the federal level?

8 A I believe there is federal support for  
9 corporations for Public Broadcasting -- I mean, some  
10 federal support.

11 Q And do you know whether certain state  
12 governments also contribute to Public Broadcasting  
13 Networks or stations?

14 A I don't know specifically.

15 Q Do you know whether or not Public  
16 Broadcasting has received charitable grants from the  
17 Satellite carriers themselves?

18 A I don't know.

19 Q Did you check into that in preparing your  
20 testimony?

21 A No.

22 Q And Public Broadcasting relies also on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 voluntary viewer donations?

2 A Yes.

3 Q And would you say that that comes from a  
4 small minority of viewers?

5 A You know, I looked at this at the time  
6 that I was doing my must-carry testimony, and I just  
7 don't remember the percent. There were figures about  
8 how many different people support it, and how much on  
9 average they paid, and so forth. I did look at  
10 contributions in that context, but I don't remember --  
11 I don't remember the extent of the contributors.

12 Q But there are alternative models of  
13 funding Public Broadcasting that this country hasn't  
14 followed, like a British TV tax?

15 A This country has not followed that. I  
16 thought that the government was telling PBS and CPB  
17 and other Public Broadcasting entities, go raise money  
18 by getting the rights to Barney dolls -- you know,  
19 look to the marketplace for money, don't depend on a  
20 handout from government.

21 Q Do you think that part of the PBS mission  
22 is to reach as many viewers as possible?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. WOODS: Your Honor, I'm going to  
2 object at this point. We had a PBS witness here the  
3 other day. Ms. McLaughlin has not been proffered as  
4 a witness on any policies of PBS. That is not at all  
5 contained in here testimony. This is well beyond the  
6 scope of the testimony and, as I say, we had a witness  
7 here the other day who was from PBS, and there was an  
8 explicit split in the testimony, and I really think  
9 this goes beyond the scope of direct.

10 MR. GLIST: I have not many questions on  
11 this area, but they are focused on the benefits  
12 received by PBS in the relationship between Public  
13 Broadcasting and Satellite carriers which I think are  
14 germane to the market which she is trying to recreate  
15 in her testimony.

16 CHAIRMAN GRIFFITH: We're 2-to-1 again at  
17 the moment. Let me say this, the manner in which your  
18 question is phrased, the objection is sustained. You  
19 certainly are free to explore the economic benefits of  
20 PBS, but the specific question you asked, the  
21 objection is sustained.

22 BY MR. GLIST:

1 Q Does the Public Broadcasting System incur  
2 any direct costs in being included in KU-band and DBS  
3 packages?

4 A I don't know of any direct cost. If it's  
5 properly a White area where you couldn't get PBS, I  
6 don't see that there is an alternative, except that  
7 perhaps a station would pop up in that area and serve  
8 the local non over-the-air people as well, in the  
9 absence of this. But as I said in my testimony, in  
10 the secondary market it's the demand that's driving  
11 this. All of the Networks and retransmitted stations  
12 -- well, all the Cable Networks benefit from being  
13 carried as well. The retransmitted stations may  
14 benefit from being carried. The real question is,  
15 what's the benefit from the people who are selling  
16 this to the consumers, and to the consumers and, as in  
17 any secondary market, you want to look at what the  
18 demand is and charge based on that demand.

19 Q Well, I understand that's been your  
20 position in testimony, and I want to ask you about  
21 specific benefits to the seller which I think might be  
22 accounted for in the negotiation.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A     commercial television network, for  
2     example, will pay Network compensation to a Broadcast  
3     affiliate for dissemination of its feed, is that  
4     correct?

5           A     It does pay Network compensation.

6           Q     The Public Broadcasting Stations which are  
7     being uplinked operate on channels that are set aside  
8     exclusively for noncommercial broadcasting?

9           A     In order to be a noncommercial station,  
10    you have to operate -- well, you don't have to operate  
11    on one of those channels. One in New York was, in  
12    fact, just sold, but you generally operate on those  
13    channels, and I am assuming that they did.

14          Q     You are familiar with the 1996  
15    Telecommunications Act?

16          A     Generally.

17          Q     Is it correct that there is 4 to 7 percent  
18    of DBS capacity set aside for access by noncommercial  
19    program providers?

20          A     I thought that was still up in the air.  
21    That is, I thought the specific rules governing  
22    exactly what DBS had to do was subject to the FCC

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 making some rule on it. So, I don't know that -- I  
2 thought that wasn't a settled issue. It may be, but  
3 I thought it wasn't.

4 Q Did the Act say that the FCC shall  
5 establish rules which will set aside 4 to 7 percent of  
6 DBS capacity for use by noncommercial programmers?

7 A I don't know specifically. The Act told  
8 the FCC to do something about it.

9 Q But you don't know the details?

10 A I don't.

11 Q Do you know whether the Act provided  
12 access at half the cost to noncommercial programming  
13 entities?

14 A I don't know.

15 Q Do you know whether Public --

16 MS. WOODS: Objection. Your Honor, I'm  
17 afraid that the terms are getting very confused here.  
18 There are a lot of other things encompassed  
19 potentially within noncommercial. In fact, many of us  
20 in the room are writing comments right now to the FCC  
21 on what the set-aside means, what should be included  
22 within it. It isn't even clear at this point that it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 is going to include the Public Broadcasting Stations  
2 that are at issue in this proceeding. That is  
3 absolutely unsettled. I believe these questions are  
4 misleading when implying that noncommercial equals PBS  
5 signals.

6 CHAIRMAN GRIFFITH: Do you want to  
7 respond?

8 MR. GLIST: My very next question was to  
9 try to clarify the position that Public Broadcasting  
10 was taking in the FCC rulemaking, to the extent that  
11 she knows.

12 CHAIRMAN GRIFFITH: Well, do you  
13 acknowledge the fact that it is a matter which is  
14 being considered right now, and --

15 MR. GLIST: There is most certainly an FCC  
16 rulemaking underway, and Ms. Woods is correct that  
17 comments are being filed, and the FCC has taken a  
18 position on some of these very issues.

19 CHAIRMAN GRIFFITH: You simply cannot  
20 equate a noncommercial station with PBS.

21 MR. GLIST: That is a matter on which we  
22 can follow up at brief.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. WOODS: That certainly is a matter  
2 that's under discussion in this rulemaking.

3 CHAIRMAN GRIFFITH: The objection is  
4 sustained.

5 MR. GLIST: Am I permitted to make any  
6 inquiry of the witness' knowledge of Public  
7 Broadcasting's position on this matter?

8 MS. WOODS: Your Honor, I'll leave to you  
9 the question, but I am going to object to that. I  
10 don't think it's appropriate to ask us in this  
11 proceeding to set forth what our comments are going to  
12 be in a proceeding where we haven't filed those  
13 comments yet.

14 CHAIRMAN GRIFFITH: I don't think he's  
15 going to object until he asks the question, so go  
16 ahead. Or you can, we've done it before here, but --

17 (Laughter.)

18 -- it doesn't work.

19 MR. GLIST: I will ask a different  
20 question. We can follow up on this issue in brief.

21 BY MR. GLIST:

22 Q If White are is defined, as you understand

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 it, as an area that is largely uncabled which can only  
2 be reached by Satellite dish, is it advantageous to  
3 Public Broadcasting to be included in a DBS package to  
4 that White area household?

5 A It may be, or it may not. I mean, only if  
6 -- I don't know whether it's advantageous. I don't  
7 see how it's disadvantageous, except for the new  
8 stations.

9 MR. GLIST: That's all I have.

10 CHAIRMAN GRIFFITH: All right. Thank you.

11 Any other cross-examination? Mr. Garrett?

12 MR. GARRETT: Good afternoon -- well,  
13 actually, I guess it's good afternoon, Ms. McLaughlin.  
14 I'm Bob Garrett, and I represent the Joint Sports  
15 Claimants.

16 CROSS-EXAMINATION

17 BY MR. GARRETT:

18 Q Let me ask you, first, to turn to Table 3  
19 of your prepared testimony.

20 A Sure. (Complying.)

21 Q Now, as I understand it, you relied on  
22 Paul Kagan data here for Table 3, is that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Yes.

2 Q Have you relied upon Paul Kagan data  
3 previously, in work that you do?

4 A Yes.

5 Q Why do you rely on Paul Kagan data?

6 A I think that it, in some areas, is the  
7 only source of data in the industry, and it certainly  
8 covers the industry in depth, in many multi-colored  
9 newsletters of all sorts.

10 Q Is Paul Kagan data generally relied upon  
11 in the industry?

12 A It is. I know that the FCC has been using  
13 it in its status of competition reports.

14 Q Is there any other source for the type of  
15 data that you report here on Table 3, namely, data on  
16 the license fees paid to Cable Networks?

17 A Other public source? I don't know of any  
18 other public source, except there are a couple of them  
19 that do -- a couple of Networks that actually do  
20 publish it, but then the same data are published in  
21 Kagan. In other words, I think Turner's license fees  
22 are in its annual report.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q And Kagan generally follows the annual  
2 reports in order to prepare the type of data that you  
3 have presented here in Table 3?

4 A Well, certainly, for Turner, he does, yes.

5 Q Now, let's make certain I understand what  
6 the data are here in Table 3. Let me ask you -- well,  
7 let's pick TNT, do you see that?

8 A Yes.

9 Q You have some data in the license fees  
10 paid to TNT during the years of 1992 through 1997,  
11 correct?

12 A Yes, and '97 is obviously estimated.

13 Q All right. And you have a 40-cent number  
14 there in 1992, do you see that?

15 A Yes.

16 Q Am I correct, that means that the average  
17 fee paid for TNT in 1992 was 40 cents per subscriber  
18 per month?

19 A Yes.

20 Q And that fee then increases to 45 cents  
21 per subscriber per month, on average, in 1993?

22 A Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q And during the five-year period that  
2 you've measured here, is it correct that the TNT fee  
3 has increased by 14 cents per subscriber per month,  
4 that is, from 40 cents to 54 cents?

5 A From '92 to '97, yes.

6 Q And if I look at USA, I see that the fee  
7 there has increased by 13 cents from 1992 through  
8 1997, that is, from 22 cents to 35 cents?

9 A Yes, that's correct.

10 Q Indeed, if I look at all of the data that  
11 you have here on Table 3, it would be correct to say  
12 that all of these fees for all of the Cable Networks  
13 have increased from 1992 through 1997?

14 A Yes.

15 Q Now, the license fees that you report here  
16 are average license fees, is that correct?

17 A Right. And when I say average, it's the  
18 total license fees collected divided by the number of  
19 subscribers during that time period, so it's not an  
20 average of the fee you pay and you pay, but it's a  
21 weighted average.

22 Q All right. But these fees are collected

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 from Cable operators, correct?

2 A Well, not just Cable operators, but Cable  
3 operators and anybody else who has the right to have  
4 it -- MMDS operators, and SMATV, and DBS operators,  
5 and Home Satellite dish people.

6 Q These fees that you report here, the  
7 average fees were fees that were collected not only  
8 from Cable operators but also from the Satellite  
9 carriers involved in this proceeding, correct?

10 A To the extent that they sell this, yes.

11 Q The Satellite carriers and typically are  
12 authorized the carriage of each of the Cable Networks  
13 listed here in Table 3, correct?

14 A These Cable Networks are typically  
15 included in both C-band packages and in DirecTV --  
16 well, DirecTV/USSB -- you have to buy it from both in  
17 order to get this package, but Prime Star and  
18 Echostar, yes.

19 Q Just so we're clear, the fees that are  
20 reflected here would include fees that are paid by the  
21 Satellite carriers who are parties in this proceeding,  
22 correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           A       Well, yes, because they are the total  
2       license fees, especially if you take something where  
3       yo know that the total is a pretty good number. For  
4       something like Turner, who is reporting it, it would  
5       be all the license fees they received divided by all  
6       the subscribers they have.

7           Q       Now, I take it that you don't know exactly  
8       what fees are paid to each of the Cable Networks by  
9       the particular Satellite carries who are parties in  
10      this proceeding?

11          A       I don't know and, if I did, I certainly  
12      would -- it would be confidential.

13          Q       But that would be information that the  
14      Satellite carriers would certainly have in their  
15      possession, correct? They would know how much they  
16      are paying for each of these Cable Networks, correct?

17          A       Oh, yes.

18          Q       In the fees that you report here are  
19      derived from a Kagan publication called Economics of  
20      Basic Cable Networks 1996, is that correct?

21          A       That's one of the sources, updated to some  
22      extent. When we're talking about the more recent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 years, we use the Cable TV Programming that came out  
2 in September '96, which is more up-to-date than that  
3 Economics of Basic Cable Networks.

4 Q Okay. But the 1996 Economics of Basic  
5 Cable Networks was one source that you relied upon?

6 A Yes, definitely.

7 Q I'm sorry I don't have more copies, I  
8 hadn't planned on using this, but this is a document  
9 that was actually provided in discovery by PBS. It is  
10 selected pages from the 1996 Kagan's Economics of  
11 Basic Cable Networks, and let me just hand these pages  
12 to you, Ms. McLaughlin, and do you recognize those as  
13 the pages from the document that we were just  
14 referencing? (Handing document.)

15 A (Perusing document.) Yes.

16 Q May I ask you to describe what is included  
17 --

18 MR. GLIST: Mr. Garrett, are you going to  
19 be distributing this to --

20 MR. GARRETT: No, as I said, I hadn't  
21 planned to use it, but you're more than -- I believe  
22 it was produced to you in discovery, and I'm happy to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 have you look at it right now. (Handing document.)

2 MR. GLIST: I take it Ms. Woods doesn't  
3 care what her witness is confronted with. (Perusing  
4 document.)

5 MS. WOODS: The witness has obviously seen  
6 this before.

7 CHAIRMAN GRIFFITH: I didn't hear what he  
8 said.

9 MS. WOODS: He said I didn't care what my  
10 witness is confronted with. I recognize that she's  
11 seen this before.

12 MR. GLIST: Okay.

13 BY MR. GARRETT:

14 Q Again, let me hand you a copy of this  
15 document. It actually bears the Bates stamp Numbers  
16 PBS 0016 through 0028. Can you just very briefly  
17 describe, Ms. McLaughlin, what is contained in those  
18 pages?

19 A Yes. It shows for each Network,  
20 subscriber numbers year-end and average, which is, you  
21 know, like one year end and another year end divided  
22 by 2. It shows the license fees, and it shows

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 programming expenses and other ratings, other  
2 information about each Network. But what I used from  
3 it was the license fee revenue line divided by the  
4 average of the year-end subs, and, as I say,  
5 occasionally, this did not have the most up-to-date  
6 data and, when it didn't, I substituted the September  
7 '96 Kagan Newsletter.

8 Q What I wanted to focus on -- actually  
9 Judge Griffith had asked some questions earlier today  
10 about the effect of the 1992 adjustment in the Section  
11 119 rates. I'd like to just ask you about -- let's  
12 just take one Network here, say, USA Network, the data  
13 for which are found on PBS Bates stamp Nos. 0028, do  
14 you have that before you?

15 A Yes.

16 Q For 1991, how many subscribers were there  
17 to the USA Network?

18 A The average subscribers were 55.9 million.

19 Q 55.9 million.

20 A Right.

21 Q And the last year that is reflected in the  
22 page that you're looking at is 1995, is that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       That's right, and it says 63.6 million  
2 average. It might actually be a little higher than  
3 that in the updated data.

4           Q       But at least it was how much?

5           A       63.6.

6           Q       So the number of subscribers for USA  
7 Network increased from approximately 56 million to  
8 approximately 64 million during that period 1991  
9 through 1995?

10          A       Yes.

11          Q       Can you tell me what the license fee was  
12 for the USA Network in 1991?

13          A       The average fee, or the --

14          Q       Yes, so that it would correspond to the  
15 data that you have here on Table 3.

16          A       Well, I --

17               MR. GLIST: Your Honor, I'd like to  
18 interpose an objection here. This is not the witness'  
19 personal knowledge, this is her reciting figures from  
20 the Kagan report. If we could be clear that it's not  
21 personal knowledge, then I'm not sure where we're  
22 going to go with this line of examination, since Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Gerbrandt, as I've been reminded, is going to be  
2 appearing next week. Having a witness read numbers  
3 aloud I thought was something denied to Mr. Seiver  
4 earlier in this proceeding.

5 CHAIRMAN GRIFFITH: Do you want to  
6 respond?

7 MR. GARRETT: Yes, Your Honor. These are  
8 the data that the witness relied upon. These are the  
9 data that underlie the table, Table 3, here. I'm  
10 simply inquiring about the scope of that data, really,  
11 in an effort to address a question that I thought you  
12 had asked earlier.

13 CHAIRMAN GRIFFITH: The objection is  
14 overruled.

15 BY MR. GARRETT:

16 Q Just tell me, during the period 1991  
17 through 1995, did the USA Network average license fee  
18 increase?

19 A Yes, it did.

20 Q And by approximately how many cents per  
21 subscriber per month did it increase?

22 A It increased by more than 10 cents.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q Okay. And if I ask you just to give me  
2 the same information -- this is USA -- for TNT, can  
3 you tell me what the increase in subscribers was  
4 between 1991 and 1995?

5 A TNT had similar subscribers to those of  
6 USA. In 1991, it had 53.6 million; in 1995, it's  
7 reported here as 62.5 -- I think it's actually  
8 somewhat higher -- but the two of them have similar  
9 carriage. And TNT's average license fee went up from  
10 just under 40 cents to 51 cents, so it also went up by  
11 more than 10 cents.

12 Q Okay. More than 10 cents, again. And if  
13 I took -- let's try one more -- ESPN.

14 A ESPN in 1991 had 59.2 million subs. ESPN  
15 is generally considered to be the larger of the  
16 subscriber Cable systems, either that or CNN.

17 Q ESPN is an all-sports network.

18 A Right, and CNN is the all-news network.  
19 It's subscribers in '95 are shown here as 64.4.  
20 Again, I think that it's slightly more than that in  
21 the more recent data. By slightly, I mean a million  
22 or so extra. And ESPN's license fees went up from

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 under about 50 cents up to 67 cents.

2 Q About a 17-cent increase?

3 A Yes, almost 20.

4 Q So, the three Networks we've looked at  
5 here, in each case license fees went up and the number  
6 of subscribers also went up.

7 A Yes, that's right.

8 Q Or to put it another way, notwithstanding  
9 that license fees went up, the number of subscribers  
10 also went up, is that correct?

11 A Right.

12 Q And I don't want to just focus on these  
13 three. Would you generally expect to find that trend  
14 with all of the Networks that you studied here?

15 A I know that all of the Networks had either  
16 increasing or constant penetration of Cable homes --  
17 that is, they were Cable and other MVPD homes, they  
18 were offered to something like 90-plus percent during  
19 the whole time period, and went up from, in some  
20 cases, from the lower 90s to the high 90s or, in the  
21 case of something like ESPN stayed in the high 90s.  
22 As Cable households and other MVPD households grew,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 these Networks also grew.

2 Q And I take it you do not know the extent  
3 to which those increased prices were passed on in  
4 every case to Cable subscribers or to Satellite  
5 carrier subscribers, or whatever?

6 A Well, I know in some cases they weren't  
7 passed on to Cable subscribers because we had rate  
8 regulation introduced during this period, and there  
9 was a freeze on Cable operator prices for a time, when  
10 they couldn't change their prices, even if they had  
11 just added Networks or prices went up to them. So,  
12 for a time, there was no increase in Cable operator  
13 prices in most systems, and then there was a bigger  
14 increase that occurred later after the FCC rules were  
15 put in place.

16 Q Now, if I look again at Table 3 here, the  
17 particular Networks that you have -- again, ESPN was  
18 a 24-hour-a-day sports programming channel, is that  
19 correct?

20 A Yes.

21 Q And it would contain some major league  
22 baseball, some NFL football, some NCAA basketball,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 NCAA football, correct?

2 A Generally, yes. I mean, it has all three  
3 of the sports, but I'm not exactly sure if it had NCAA  
4 or NFL.

5 Q Do you know whether TNT had any major  
6 professional or collegiate sports?

7 A Yes, it did.

8 Q And do you know what sports those were?

9 A Well, I know that for part of the year it  
10 has the Sunday Night Football, the NFL football, and  
11 it also has basketball.

12 Q That's the NBA basketball, correct?

13 A Yes.

14 Q Okay.

15 A The Bulls are sometimes on TNT.

16 Q Okay. And they are also sometimes on WGN,  
17 too, aren't they?

18 A Yes.

19 Q Do you watch the Bulls?

20 A Occasionally.

21 Q Well, every little bit helps. You were  
22 asked a number of questions about advertising on Cable

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Networks, do you recall that?

2 A Yes.

3 Q Am I correct that not all Cable operators  
4 insert advertising on Cable Networks?

5 A Yes, you are correct.

6 Q Assume for the moment that a Cable  
7 operator tells a particular Cable Network that it does  
8 not want to insert advertising or it can't insert  
9 advertising. Does that Cable operator then receive  
10 some special discount from the Cable Network?

11 A No.

12 Q Why is that?

13 A The Cable operator is willing to pay the  
14 price that the Cable Network charges despite the fact  
15 that he's not inserting advertising. If he's too  
16 small or his physical plant is not set up in the right  
17 way, it may not make any sense economically for him to  
18 insert advertising. And for others, they insert  
19 advertising on some Networks but not other Networks.

20 Q So, would it be fair to say that in a free  
21 marketplace setting, there is no special discount  
22 given for inability to insert advertising?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A That's right.

2 Q Now, you were also asked a number of  
3 questions by Mr. Glist concerning the costs of C-band  
4 and KU-band operators, do you recall that?

5 A Yes.

6 Q And, again, I take it that the nature of  
7 those costs would be something within the knowledge of  
8 the Satellite carriers, correct?

9 A Certainly, it's their costs.

10 Q And they haven't shared any of those costs  
11 with you, except to the extent that you have been able  
12 to glean information about the Superstar, is that  
13 correct?

14 A Superstar and United Video.

15 Q But other than that, the Satellite  
16 carriers have not given you any of the particular  
17 costs that they incurred?

18 A Well, they didn't give me the United Video  
19 data either, it was publicly available and I just got  
20 it offline.

21 Q Let me ask you to turn to that United  
22 Video data, which I believe is in your Table 7.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A (Complying.) Okay.

2 Q All the data that are here on Table 7 were  
3 taken directly from the United Video 10Ks that you  
4 cite down at the bottom of the page, is that correct?

5 A Yes.

6 Q If I go up to -- Superstar is one of the  
7 Satellite carriers in this proceeding, correct?

8 A Well, Superstar and Netlink are now  
9 merged. So, I don't know whether Superstar -- I mean,  
10 I was thinking of Netlink as being the Satellite  
11 carrier. Maybe it's now called Superstar.

12 Q Yes, but they weren't merged until 1996,  
13 were they?

14 A That's right, April, I think.

15 Q So the data that you have here only goes  
16 through 1995, is that correct?

17 A Right.

18 Q So the data that you have here would not  
19 include any of the data from Netlink, but would simply  
20 be Superstar's?

21 A That's right.

22 Q And there's -- up on the top under

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Superstar, you show the revenues of Superstar for 1991  
2 through 1995?

3 A That's right.

4 Q And then the next line item is their  
5 operating expenses from 1991 through 1995, is that  
6 correct?

7 A That's right.

8 Q And then there's a term here called the  
9 "EBITDA", do you see that?

10 A Yes.

11 Q And that means Earnings Before Interest,  
12 Taxes, Depreciation, Amortization, is that correct?

13 A Right.

14 Q And that's a standard term that is used in  
15 the industry, EBITDA?

16 A Right, it's a sort of cash flow.

17 Q And this shows that that sort of cash flow  
18 for Superstar was approximately \$500,000 in 1991, is  
19 that correct?

20 A That's right.

21 Q And in 1995, it had increased to just  
22 under \$22 million, is that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Right.

2 Q And if Superstar pays a higher royalties  
3 in this proceeding, as a result of this proceeding,  
4 and if they don't pass it on to their consumers,  
5 they'll have EBITDA a little bit less than -- or  
6 somewhat less than \$22 million, correct?

7 A If they charge the same price and have  
8 higher costs, their cash flow would go down.

9 Q So they would make less than the \$22 -- if  
10 we just looked at 1995 data, they would be making less  
11 than the \$22 million, if the prices increase?

12 A If they paid higher expenses and didn't  
13 increase the price.

14 Q They could also increase their prices and  
15 keep their cash flow up to much the same levels,  
16 correct?

17 A That would be the other option.

18 Q Now, you were also asked a number of  
19 questions about promotional considerations that Cable  
20 Networks give to Cable operators, do you recall that?

21 A Yes.

22 Q And you were initially asked about the Fox

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 promotional considerations for the Fox News Network?

2 A Yes.

3 Q And the source of your information about  
4 that was from reading the trade press, is that  
5 correct?

6 A Yes.

7 Q And you testified in response to some  
8 other questions that Mr. Glist asked, that you were  
9 not familiar with any of the actual contracts or  
10 affiliation agreements that Cable Networks had with  
11 Cable operators, is that correct?

12 A Well, I'm not specifically familiar with  
13 them, and I'm certainly not testifying about them.  
14 Anything I know about them would be confidential.

15 Q Okay. But your knowledge about what Fox  
16 and some of the other new Networks are paying in the  
17 way of promotional considerations is based upon your  
18 reading of the trade press, correct?

19 A Yes.

20 Q In your reading of the trade press, are  
21 you aware of any promotional considerations that USA  
22 Network pays?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 A No, I'm not.

2 Q And based on your reading of the trade  
3 press, are you aware of any promotional considerations  
4 that TNT pays?

5 A No.

6 Q Same question with respect to ESPN?

7 A No, these promotional considerations, I  
8 said before, were the new Networks that were trying to  
9 get onto capacity constrained Cable systems, and they  
10 were making these payments in order to say, you know,  
11 pick me instead of him, essentially, to fill your slot  
12 with.

13 Q You were also asked some questions about  
14 TCI, do you recall that?

15 A Yes.

16 Q About the decline of the stock value of  
17 TCI over the past couple of years?

18 A It was some questions about stock, yes.

19 Q Do you know what the total value is of TCI  
20 today, even with those declines?

21 A No. The only thing I do know is that TCI  
22 is certainly not -- they are not doing as well,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 obviously, as the stock market wanted them to be  
2 doing. It was -- it had promise in mind of growth,  
3 growth, growth, more than you're doing, but they  
4 haven't been going down. Nevertheless, they just  
5 obviously haven't been going up as much as the  
6 stockholders had previously expected them to, or would  
7 like them to in the future.

8 Q Is it sort of a rule-of-thumb in the  
9 industry that if a Cable operator were selling its  
10 Cable systems, that it would generally receive a price  
11 of about \$2,000 per subscriber?

12 A Very generally -- a very general rule-of-  
13 thumb. I mean, it wouldn't necessarily be \$2,000. I  
14 mean, it could be \$1500, or it could be \$2500, but a  
15 very general rule-of-thumb.

16 Q Do you know how many subscribers TCI has,  
17 Cable subscribers TCI has?

18 A It depends whether you count the ones that  
19 they just own, or the ones that they own part of, but  
20 they have something like 14 million subscribers.

21 Q And in addition to their interest in Cable  
22 systems, they also have interest in a number of Cable

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Networks, is that correct?

2 A Yes.

3 Q And they have interest in a number of the  
4 Satellite carriers, correct?

5 A Yes, the United Video and  
6 Superstar/Netlink.

7 Q They have interest in Superstar and  
8 Netlink, Prime Star, correct?

9 A Prime Star, they have a smaller ownership  
10 position, I think.

11 MR. GARRETT: I have no further questions.

12 CHAIRMAN GRIFFITH: Is there any other  
13 cross-examination?

14 Come on up, Mr. Ossola. I have a feeling  
15 we're near the end. Notwithstanding, I need a five-  
16 minute recess.

17 (Whereupon, a short recess was taken.)

18 CHAIRMAN GRIFFITH: All right. This has  
19 something to do with Network cross-examination?

20 MR. OSSOLA: Yes. If it doesn't, I should  
21 go back to where I was sitting. I have a friendly  
22 cross.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Ms. McLaughlin, I am Chuck Ossola,  
2 representing, as you can no doubt tell from the  
3 commentary, Commercial Networks.

4 CROSS-EXAMINATION

5 BY MR. OSSOLA:

6 Q Do you recall that Mr. Glist asked you a  
7 few questions about the retransmission consent that  
8 had been granted by the Networks?

9 A Yes.

10 Q And I think he asked you whether you were  
11 aware that initially the Networks wanted cash in  
12 exchange for granting retransmission consent?

13 A That's right.

14 Q Now, this subject has to do, does it not,  
15 with respect to the Networks, with the granting or not  
16 granting of retransmission consent for owned-and-  
17 operated local stations of the Networks?

18 A That's what my answer to him was about --  
19 that is, that it's the stations that get  
20 retransmitted, and the Networks made arrangements for  
21 their stations.

22 Q And by their stations, the ones that they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 owned and operated?

2 A Yes, the ones that they owned.

3 Q Now, I think you said that ultimately  
4 retransmission consent was granted, but in the case of  
5 ABC and NBC, it was in exchange for the carriage of  
6 their new Cable Networks?

7 A Yes.

8 Q Is it true -- would you agree that that  
9 exchange had great value to the Networks?

10 A It certainly did have value to the  
11 Networks. It gave them a startup on Cable Networks  
12 which, in NBC's case, became the platform for MSNBC,  
13 its new Cable news network, and in ESPN's case,  
14 enabled them to take ESPN and split it out and throw  
15 some extra sports in and make ESPN2 out of it, and get  
16 distribution, and now they both have valuable  
17 networks.

18 Q Is it fair to say that it is difficult to  
19 launch, in today's climate, a new Cable network?

20 A It's not that Cable networks don't get  
21 launched, it's that there are a large number of Cable  
22 networks looking for a relatively small number of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 places.

2 Q And places, you're referring to the  
3 limited amount of capacity that's available to carry  
4 Cable networks on the channels provided by Cable  
5 operators?

6 A By the Cable operators that -- Cable  
7 operators are expanding their channel capacity, but at  
8 any given point in time there's only so much capacity  
9 available, and until there is a big upgrade of the  
10 system, there's no room to put new channels.

11 Q Now, what happens if you launch a new  
12 Cable network and you don't get on the Cable operator  
13 systems?

14 A Well, you're not going to get too many  
15 subscribers. Some networks have been launched,  
16 largely through carriage in Home Satellite  
17 environment, but they don't wind up with too many  
18 subscribers.

19 Q And if a Cable network doesn't have very  
20 many subscribers, it doesn't command much value with  
21 regard to advertising, does it?

22 A You need a certain critical fault to get -

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       - I mean, you can get advertising in the beginning,  
2       but you're trying to reach more homes in order to have  
3       that advertising. As an example, TV Land, which is  
4       the new network spinoff of Nick-at-Nite. And they put  
5       out -- it's old TV shows is the theme. They included  
6       the old advertising in the shows, you know, partly as  
7       a little nostalgia value, but because what else were  
8       they going to do with it? It wasn't in that many  
9       homes. How much could they actually sell the  
10      advertising for? So they didn't even put the  
11      advertising in right away. Now, that may be an  
12      extreme, and it had a cute little promotional kick to  
13      it, that you get to see the old ads, but, in fact,  
14      they weren't giving up very much money by doing that  
15      because it's not carried in many homes.

16           Q       So, there is a strong correlation, is  
17      there not, between the number of homes that the  
18      network is reaching and the revenues that can be  
19      generated from the sale of advertising?

20           A       There certainly is a relationship there,  
21      in that if you reach more homes and the people watch  
22      more, then you'll get more advertising revenues.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q But if you're a consumer deciding whether  
2 to watch a Cable network, you're not going to be able  
3 to make that decision unless it's, in fact, carried by  
4 your local Cable operator, is that right?

5 A Well, the consumer could -- doesn't have  
6 to just rely on their local Cable operator, they could  
7 go out and buy a dish or, you know, use some other  
8 mechanism in order to get that network.

9 Q So if they still wanted to see the  
10 network, they could go out and get a dish, presumably  
11 as long as they are in a White area.

12 A No, you wouldn't have to be in a White  
13 area to get TV Land, you could get TV Land anyway.

14 Q We're talking about Cable networks, not  
15 Broadcast --

16 A Right, that's what I was talking about.  
17 That's right.

18 Q My apology. Do you have any idea what  
19 Cable networks actually are required to do  
20 competitively in order to persuade Cable operators  
21 such as TCI to carry them?

22 A Are you talking about new Cable networks?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 Q Yes, I'm talking about new Cable networks  
2 such as the ones launched by NBC and ABC.

3 A Well, those new networks were carried by  
4 TCI, as far as I know, based on retransmission consent  
5 in certain markets, in other markets not. I mean, you  
6 know, TCI -- I don't know exactly the terms of what  
7 TCI had to do in order to get retransmission consent  
8 for the network stations in the markets that TCI  
9 existed and one of those O&O stations existed. But  
10 the other new networks now on TCI, the ones that they  
11 are putting on are the ones that are giving them up-  
12 front money, or at least that's what's reported in the  
13 trade press.

14 Q Do you have any idea what kind of up-front  
15 money is paid by Cable networks in order to accomplish  
16 that?

17 A I think that I testified that a few Cable  
18 networks were giving promotional considerations.  
19 Animal Planet, it's been reported, was paying \$5. TV  
20 Land is not giving that kind of money, but they are  
21 paying something, I believe, and Fox News Channel was  
22 the one who was reported with such a big figure of \$10

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 or \$11, although whether TCI actually received that in  
2 cash, I don't know. There were some other possible  
3 considerations of ownership, or something, option to  
4 buy, something like that.

5 A I think you said that TCI had, in fact,  
6 carried the new ABC and NBC Cable Networks, is that  
7 right, is that your understanding?

8 A ESPN2 and MSNBC, they are carried to a  
9 certain extent on TCI systems. I couldn't tell you  
10 exactly, sitting here, but I know I've looked at it,  
11 and I know they do carry them to a certain extent.

12 Q And it's true, is it not, that TCI is the  
13 largest -- is at least the single largest owner of  
14 Cable systems?

15 A Yes.

16 Q Let me direct you, if I may, to Table 5  
17 attached to your testimony, the table that dealt with  
18 Satellite Retransmitted Stations?

19 A Yes.

20 Q Let me ask you to look at the second type  
21 network on the left side, the second type station --  
22 in fact, the ABC Network, CBS Network, and NBC Network

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 categories, do you see those on the left side?

2 A Yes.

3 Q Am I reading this graph correctly, to see  
4 that over time -- that is, from 1989 to 1995 -- there  
5 has been an increase in the number of Network stations  
6 carried by Satellite carriers?

7 A Yes, to some extent, because this ends in  
8 1995, I think that there was some drop-off in 1996,  
9 but there would still be an increase.

10 Q Let's look at the ABC figures here for a  
11 moment. I think you testified earlier that the  
12 increase in rates occurred in the 1992 time frame?

13 A Right.

14 Q From 1992, am I correct that as to ABC,  
15 that WPLG and KOMO were added in the later years?

16 A They were added in '94.

17 Q And that was after the rate increase,  
18 correct?

19 A That's right.

20 Q If you will drop down to the CBS Network  
21 stations, after the rate increase, does your graph  
22 show that WUSA and KPIX were both added in 1994 and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 thereafter?

2 A It shows that WUSA and KPIX were carried  
3 beginning in '94, and were still carried at the end of  
4 '95.

5 Q And with respect to NBC, is it correct  
6 that WBZ and KNBC were also added in 1994, after the  
7 rate increase?

8 A Yes. Well, you know, after the rate  
9 increase occurred in '92, right.

10 Q If you -- so do you agree that when you  
11 look at this and you are looking at the Network  
12 stations, the number of stations carried has doubled  
13 from the time frame of when the rate increase went  
14 into effect to at least 1995?

15 A Right. What this is, if you look at Prime  
16 Time, Prime Time had East Coast stations, and then  
17 they added West Coast stations. So, now you can buy  
18 from them the NBC/ABC/CBS particular stations on the  
19 East Coast and also on the West Coast. They sell it  
20 as Prime Time East and West.

21 Q So that's what was responsible, in your  
22 view, for the doubling of the stations that were

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 shown?

2 A That's right.

3 MR. OSSOLA: I have nothing further.

4 Thank you.

5 CHAIRMAN GRIFFITH: All right. Any other  
6 cross-examination? All right, Mr. Stewart.

7 MR. STEWART: I intend to be brief, and  
8 hope that intention will come to pass. My name is  
9 John Stewart, Ms. McLaughlin, I'm representing the  
10 Broadcaster Claimants Group in this proceeding.

11 CROSS-EXAMINATION

12 BY MR. STEWART:

13 Q You spoke with Mr. Glist and then again  
14 with Mr. Ossola, about startup Cable networks that  
15 offer promotional consideration or reduced-rate  
16 carriage in exchange for being added to Cable system  
17 lineups, is that right?

18 A Yes.

19 Q And you attributed those kinds of premiums  
20 or promotional considerations to the constrained or  
21 the limited number of channels available for Cable  
22 systems, is that right?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 A Yes.

2 Q Now, as compared with Cable, are DBS  
3 systems constrained in terms of the number of channels  
4 they offer, to the same degree?

5 A No, there is more -- all of them have high  
6 levels of channels to start with, and they have a fair  
7 amount of space -- Prime Star just recently expanded.  
8 That was the only one that you could say was somewhat  
9 capacity-constrained. I mean, there is a limit to the  
10 capacity, but in comparison to a Cable system that  
11 might have a total of, say, 54 channels, or even a  
12 large Cable system that would have 70 channels, there  
13 are more channels available in these other packages.  
14 And, of course, some of the Cable channels have to be  
15 set aside for must-carry, and Public and Access and so  
16 forth, so if I have on Echostar 40 Basic Cable  
17 channels, and then they offer some Premium and Pay-  
18 Per-View and so forth, and some Network channels, they  
19 have sort of more room than my Cable system if it has  
20 to fit in 40 channels and the Premium and Pay-Per-View  
21 and so forth, and -- I live in New York City, and we  
22 have a lot of local channels, so a lot of local

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 channels and a lot of government access channels.

2 MR. STEWART: I have no further questions.

3 Thank you.

4 CHAIRMAN GRIFFITH: All right. Any other  
5 cross-examination?

6 (No response.)

7 Redirect?

8 MS. WOODS: I don't have anything at this  
9 time.

10 CHAIRMAN GRIFFITH: All right. Thank you.  
11 Does that conclude the --

12 MR. GLIST: Could we have just a moment,  
13 Your Honor?

14 CHAIRMAN GRIFFITH: All right, sure.

15 MS. WOODS: Your Honor, I'm a little  
16 confused. Is there going to be more cross after  
17 redirect, because I thought that --

18 CHAIRMAN GRIFFITH: Well, I'm not sure he  
19 has any --

20 MR. OSSOLA: Your Honor, I don't believe  
21 he's entitled to recross.

22 CHAIRMAN GRIFFITH: We're going to see in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 just a minute.

2 MR. GARRETT: Your Honor, just for the  
3 record here, because this issue may come up again, I  
4 do think that he's entitled if there's something that  
5 I raised on my cross, I think it's only fair --

6 CHAIRMAN GRIFFITH: Yes, he would be  
7 entitled to do that, but she hasn't had any redirect,  
8 so he can't recross on that.

9 MS. WOODS: But I could -- I guess my view  
10 would be that I could redirect after this recross?

11 CHAIRMAN GRIFFITH: Of course. Let's see  
12 if there is any.

13 FURTHER CROSS-EXAMINATION

14 BY MR. GLIST:

15 Q Ms. McLaughlin, you were asked just a  
16 moment ago about the increase in the number of Network  
17 stations carried by Satellite carriers.

18 A Yes.

19 Q They were all added around 1994?

20 A Yes.

21 Q Do you know why they were added at that  
22 time?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           A       I think I explained that Prime Time added  
2 the West. Do you mean why they picked '94 to do that?

3           Q       Yes.

4           A       No, I don't.

5           Q       Isn't it because each DBS system has to  
6 uplink its own network complement? For example, Prime  
7 Star, wouldn't they have to uplink a complement of  
8 Network signals?

9           A       No, that wasn't what we were talking about  
10 here. The same carrier, if I understand your question  
11 -- Prime Time 24 had East Coast stations. It then  
12 decided to, in addition to the East Coast three  
13 Network stations it was uplinking, also to uplink  
14 three West Coast stations, which it continues to do.  
15 I don't think that it's anybody's obligation as part  
16 of that.

17          Q       Isn't it your understanding that a DBS  
18 carrier has to physically uplink the Network  
19 affiliates to its own DBS Satellite in order to reach  
20 the customer?

21          A       Well, couldn't it uplink the Prime Time  
22 East? It doesn't need Prime Time West to do that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Q So this is just a substitution of  
2 affiliates?

3 A No, not a -- yes. There are two ABC  
4 affiliates, one operating on East Coast time and one  
5 operating on West Coast time. As a matter of fact,  
6 with Echostar, I subscribe to the East Coast Networks,  
7 but if I wanted to I could get both East Coast and  
8 West Coast, and then time shift and watch programming  
9 when the time -- at different times.

10 Q You were also asked a question about  
11 channel constraints in the Cable Television industry.

12 A Yes.

13 Q When you and I were engaged in  
14 examination, didn't you tell me that you did not know  
15 the terms of the affiliation agreements between  
16 Satellite carriers and Cable Networks?

17 A I don't know -- and if I did, would not be  
18 specifically testifying about any particular  
19 affiliation agreement. I'm talking about what's been  
20 reported generally in the trade press, in my answer to  
21 that other question.

22 Q So you would not know what up-front

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 payments, if any, have been made to Satellite carriers  
2 by Cable Networks?

3 A I haven't seen any reports of it in the  
4 trade press. As far as I know, the big payments have  
5 been made to get onto capacity constrained systems.

6 Q Based only on what you have read in the  
7 trades?

8 A Yes.

9 Q And we have established that these  
10 affiliation agreements are highly confidential?

11 A Yes.

12 MR. GLIST: I have nothing else.

13 CHAIRMAN GRIFFITH: Any redirect?

14 MS. WOODS: No, Your Honor.

15 CHAIRMAN GRIFFITH: Thank you. You may  
16 step down, ma'am. Thank you very much, you are free  
17 to go.

18 THE WITNESS: Thank you.

19 (Whereupon, the witness was excused.)

20 CHAIRMAN GRIFFITH: Ladies and gentlemen,  
21 let me just inquire, on Monday our only witness is Dr.  
22 Owen, is that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. WOODS: That's correct, Your Honor.

2 CHAIRMAN GRIFFITH: And now, 9:30 or  
3 10:00?

4 MR. OSSOLA: Nine-thirty is fine with me.  
5 It's fine by me, but it's your call. It could be  
6 10:00 as well. If you would prefer 10:00 -- I mean,  
7 since we only have one witness, I don't know how long  
8 --

9 CHAIRMAN GRIFFITH: I would prefer 10:00,  
10 but we will start at 9:30. My two colleagues are  
11 sitting here in a hotel room waiting for me to come in  
12 --

13 MS. WOODS: Your Honor, if it's not a  
14 matter of great difference to everyone else, I do have  
15 another matter I'm handling that morning, and I would  
16 much prefer to come at 10:00.

17 MR. GALT: George Galt, on behalf of Music  
18 Claimants. Music is going to have someone coming down  
19 from New York to attend that day. It would be easier  
20 for him if it was ten o'clock.

21 CHAIRMAN GRIFFITH: Well, I've made so  
22 many decisions today.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(Laughter.)

Ten o'clock a.m., Monday. Have a pleasant Sunday, I guess -- Saturday afternoon and Sunday.

(Whereupon, at 1:30 p.m., the above-entitled proceedings were adjourned, to reconvene on Monday, March 24, 1997, at 10:00 a.m.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

CERTIFICATE

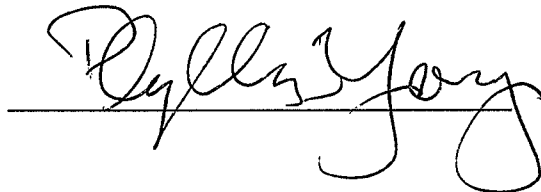
This is to certify that the foregoing transcript in  
the matter of:           Hearing: Satellite Rate Adjustment,  
                                  Docket No. 96-3 CARP-SRA

Before:                   Library of Congress  
                                  Copyright Arbitration Royalty Panel

Date:                     March 22, 1997

Place:                    Washington, DC

represents the full and complete proceedings of the  
aforementioned matter, as reported and reduced to  
typewriting.

  
\_\_\_\_\_

Copyright Arbitration  
Royalty Panel

Satellite Rate Adjustment

03-22-97

p1598-1795

WP5.1

Neal R. Gross & Co.  
(202) 234-4433